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**Central Administrative Tribunal
Jabalpur Bench**

OA No.107/05

Jabalpur, this the 30th day of August 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

1. Dipak Kumar Bajpai
Son of late Shri Dayashankar Bajpai
R/o Janta 515, Darpan Colony
Jhantipur
Gwalior.
2. Mahadev Prasad
Son of Shri Dhaniram Pal
R/o In front of Adarsh Mill
Ghosipura
Gwalior.
3. Govind Singh Bhadaria
Son of Shri Satish Singh Bhadaria
R/o Seth Murainawalo Ka Makan
Goshpura No.1
Baniya Padha
Gwalior.

Applicants

(By advocate Smt.S.Menon, St.Advocate,
assisted by Ms.Nikita Awasthi)

Versus

1. Union of India through
Comptroller & Auditor General of India
Bahadur Shah Zafar Marg
New Delhi.
2. Principal Accountant General
(Commerce and Civil Audit-I), M.P.,
Moti Mahal
Gwalior (M.P.)
3. Deputy Accountant General (Audit-II)
Moti Mahal
Gwalior.

4. Haneef Khan
 Son of Salim Khan
 R/o Naka Chandra Vadi
 Ram Nagar, Gudia Pahad
 Gali No.3 (Mullaji)
 Gwalior.

5. Ashok Kushwaha
 S/o Shri Rathi Ram
 Madhavganj
 Niranj Bai Ka Mandir Ke Peeche
 Mana Babuka Bada
 Lashkar
 Gwalior.

6. Jagdish Singh Rathore
 S/o Shri Antram Rathore
 Nadipat Tal
 Morar, Joda Nagar
 Gwalior.

Respondents

(By advocate: Shri M. Chaurasia)

ORDER

By A.K.Gaur, Judicial Member

By filing this OA, the applicants have sought issue of a direction to the respondents to grant them similar benefits as was granted to the applicants in OA No.76/2000 and to grant them regular pay scales from the date their juniors were granted the same with consequential benefits of arrears and proper placement in seniority list of Group 'D' post.

2. The grievance of the applicants is that those appointed along with the applicants and those later have been regularized in Group-D post and placed them in the regular pay scale of Rs.2550-3200 in pursuance of the order passed by this Tribunal in OA No. 76/2000 (Lakhan Lal Basaya and 11 others Vs. Union of India and others), which was upheld by the Hon'ble High Court and the Supreme Court, but the applicants have not been regularized as yet. It is stated that the applicants are similarly situated like private respondents and, therefore, the official respondents are bound to extend the similar benefits of the judgement rendered in OA No.76 of 2000 and not

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doing so, is in violation of Articles 14 & 16 of the Constitution of India. It is averred in the OA that the applicants are senior to respondents 5 & 6 and similarly placed like respondent No.4 and, therefore, the benefit of the decision rendered in OA No.76/2000, which had received the seal of approval from Apex Court ought to have been extended to the applicants as well. Projecting their grievance, the applicants submitted representations on different dates but these, according to them, remain unresponded to. Hence this OA.

3. Respondents have filed a detailed reply denying the averments contained in the OA. They have stated that recruitment to Group 'D' staff in Indian Audit and Accounts Department is governed by statutory Recruitment Rules 1988 amended by Indian Audit & Accounts Department (Group-D post) Recruitment Amendment Rules 2002 (Annexure R-1) framed by the President of India under Article 148 (5) of the Constitution after consultation with the Comptroller & Auditor General of India. The age limit is 18-25 years. The applicants being over-aged are not eligible for regularization/appointment in Group-D posts. According to respondents, temporary status was to be granted to the casual labourers vide OM dated 10th September 1993 and the said scheme envisaged conferment of temporary status to casual labourers who were in employment on the date of issue of the above order and had completed 240 days (206 days in case of offices observing 5 days a week) and as per R-3 statement annexed with the reply, none of the applicants had rendered one year continuous service (206 days) prior to 10th September 1993, the date on which the scheme came into force and, therefore, none of them was entitled for conferment of temporary status. The respondents have denied that private respondents 4 to 6 are junior to the applicants as, according to them, the inter-se seniority of casual workers is not maintained. The respondents have further contended that for appointment of Group-D posts, the following conditions are required to be fulfilled:

- (i) The casual workers should be registered with employment exchange and their name should have been sponsored by this agency.

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(ii) The casual workers engaged through employment exchange should have possessed experience of minimum two years continuous service as casual labourer and subsequently sponsored by employment exchange in accordance with their position in the register.

(iii) The benefit of 2 years continuous service as casual labourer may be given if he has put in at least 206 days of service during each of the two years of service as per DP&AR OM No.49014/84-Estt(C) dated 26th October, 1984.

4. It has been contended by the respondents that the name of applicant No.3 was not sponsored by employment exchange while engaging him as casual labourer in 1993. The applicants also did not fulfill the conditions stipulated in Annexure R-3. Moreover, there is a ban on recruitment as per CAG circular dated 29.12.2003 and circular dated 5.2.2004 (Annexure R-6 & R-6A). Due to the ban on recruitment, no casual labourer was recruited in Group-D post after 6/1997 except for 12 casual workers who were regularized in compliance with the orders of the Tribunal. There is no arbitrariness and discrimination in the action of the respondents, they contended.

5. The learned counsel for the respondents argued that the OA is barred by delay and laches. He has placed reliance on 1996 SCC L&S 148 – State of Karnataka Vs. Kotarayya and argued that delay cannot be condoned on ground that some judgement came to the knowledge of the applicants after some time and as such similar benefits should have been granted to them.

6. We have carefully considered the arguments advanced by the learned counsel for the parties. We find that the judgement and order in OA No.76 of 2000 was rendered by this Tribunal on 21.7.2000 and the applicants are claiming benefits of the judgement in the year 2005, without giving any application and affidavit for condonation of delay. The applicants have approached this Tribunal after a lapse of more than 5 years. In view of 2000 SCC L&S 53 R.C.Sharma, the OA is liable to be dismissed on ground of delay and laches. Apart from the question of limitation, even on merits, the OA deserves to be dismissed in view of the decision rendered by Hon'ble Supreme Court

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in Union of India & another Vs. Mohan Pal & others 2002 SCC L&S

577. In Para 6 of the judgement it is observed as follows:

“6. Clause 4 of the Scheme (which came into effect from 1.9.93) is very clear that the conferment of “temporary” status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing Scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get “temporary” status. We do not think that clause 4 of the Scheme envisages it as an ongoing Scheme. In order to acquire “temporary” status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving “temporary” status to all the casual workers, as and when they complete one year’s continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given “temporary” status and later they are to be absorbed in Group ‘D’ posts.”

7. Learned counsel for the respondents has also placed reliance on the Constitutional Bench decision of Supreme Court in Secretary, State of Karnataka Vs. Uma Devi - 2006 3 SLR 1. This Constitutional Bench decision puts a fetter on the discretion of authorities in the matter of regularization.

8. After carefully considering the rival contentions, we are of the considered view that the applicants have not been able to make out a case for regularization of their services and the OA is liable to be dismissed. OA is accordingly dismissed. No costs.

in fav
(A.K.Gaur)
Judicial Member

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प्रांकन सं अ/न्या
प्रतिलिपि वाचन विभाग
(1) सदित, उप अधिकारी वाचन विभाग, जबलपुर, दि.....
(2) अधिकारी वाचन विभाग, जबलपुर
(3) प्रतिलिपि वाचन विभाग, नं कांसल
(4) वाचन विभाग, जबलपुर, नं कांसल

General
(Dr. G.C. Srivastava)
Vice Chairman

M. Chauhan
म. चौहान
7/9/06

M. Chauhan
म. चौहान
7/9/06

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