

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR

Original Application No.404/2005

Indore, this the 17th day of November, 2005

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. Sudhan Kumar, aged about 30 yrs.
S/o late Shri Chhotelal,
C/o Shri Om Prakash Dakh,
House No.153, Mela Ground, Vivek
Nagar Colony, Behind P&T Colony,
Gwalior.
2. Kishore Kumar Dhakad, aged
about 32 years, S/o late Shri
Payrelal, Naka Khandrabadni,
C/o Shyam Sunder Gupta Kirana
Shop Ram Nagar Gali No.1, Gwalior.
2. Abid Khan, aged about 29 years
S/o Shahjad Khan, Naka Chandrabadni,
C/o Shri Shyam Sunder Gupta,
Kirana Shop Ram Nagar, Gali
No.1 Gwalior.

APPLICANTS

(By Advocate - Shri S.K. Nagpal)

V e r s u s

1. Union of India,
Through : The Secretary,
Government of India, Ministry of
Finance, New Delhi.
2. Comptroller & Auditor General of
India, 10, Bahadur Shah Jafar
Marg, New Delhi.
3. Principal Accountant General,
Audit-1, Gwalior.

RESPONDENTS

(By Advocate - Shri M.Rao)

O R D E R

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the
following main reliefs :-

- "i) to prepare/maintain a seniority list of all
casual employees engaged in Group 'D' posts including the
applicants.
- ii) to stop the policy of hire and fire and engage the
employees against casual vacancies ~~and~~ as and when
required strictly in accordance with seniority list
maintained as suggested in para (1) above.



iii) to regularize the applicants against Group 'D' posts as and when vacancies become available strictly in accordance with seniority list, the age bar be relaxed by the Competent Authority in the interest of justice."

iv) that no fresh recruitment to Group 'D' posts should be made from local market till applicants list are regularized accordance with their seniority."

2. The brief facts of the case as stated by the applicants are that the applicant No. 2 is working since 1993 and the applicants No.1 and 3 are also working since 1997 against Group 'D' posts on casual basis with artificial break. They had worked for more than 205 days in a year and have attained the temporary status. The services of the applicants were discontinued by the respondent No.3 mainly to avoid continuity of service of the applicants. Thereafter the respondents have engaged some other persons from the other resources. The applicants have submitted their representations Annexure-A-3, A-4 and A-5 to respondent No.3 requesting them to engage them on casual basis without giving any artificial breaks and to regularize their services against Group 'D' posts as and when regular vacancies are available. However, the respondents have rejected the claim of the applicants No.1 and 2 vide orders dated 11.3.05 and Annexures-A-1 and A-2 and the applicant No.3 has not yet received any reply to his representation. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. It is argued on behalf of the applicants that the applicants were appointed/engaged after due selection and they discharged their duties satisfactorily. Respondent No.3 should have appointed the applicants when the vacancies became available, instead of resorting to fresh recruitment from open market. According to the principles of natural justice, preference should have been given to the applicants. The learned counsel for the applicants further argued that similar case has

been decided by this Tribunal vide order 28.7.2005 in OA 505/04 but the respondents have not considered the claim of the applicants.

5. In reply, the learned counsel for the respondents argued that contract service between a daily wager and employer starts on a particular day and ends on that very day. A daily wager does not hold any post and a scale of pay. Accordingly they have no right to continue on any post. The applicants were engaged on daily wages subject to need for jobs of casual and seasonal nature. The nature of work performed by the applicants was not continuous and thus they were not required to be re-engaged as casual worker. The applicants were not holding any regular post under the respondent-department. They were never appointed against the regular vacancy of Group 'D' post, and, therefore, they are not entitled for regularisation of their services.

5. After hearing the learned counsel for the parties and carefully perused the records, we find that admittedly the applicants were engaged as daily wager since 1993 and 1997 with artificial break and their services were discontinued verbally. The applicants' names were sponsored by the employment exchange except applicant No.1 and they are serving a very long time. We have perused the order dated 28.7.2005 passed in OA No.505/04 in the case of **Devendra Singh and Ors. Vs. UOI & Ors.** wherein it has been held as under:-

"6. Accordingly we dispose of this OA with the following directions :

- (i) In the event respondents have availability of work which has been earlier performed by applicants, they shall be considered for re-engagement in preference to juniors and outsiders.
- (ii) Respondents shall consider regularizing applicants against Group 'D' posts subject to their eligibility as per rules and availability of vacancies."

We find that the present case is squarely covered by the decision of this Tribunal in the case of **Devendra Singh** (supra). We are,



therefore, in respectful agreement with the aforesaid order passed by this Tribunal and we hold that the aforesaid order passed by this Tribunal shall be mutatis mutandis applicable to the case of the present applicants as well.

6. The OA stands disposed of with the aforesaid terms. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पूरांकन सं ओ/ल्या.....
पत्रिका सं ओ/ल्या.....
(1) सचिव, उच्च न्यायालय, नया दिल्ली
(2) अध्यक्ष, उच्च न्यायालय, नया दिल्ली
(3) प्रमुख, उच्च न्यायालय, नया दिल्ली
(4) न्यायाधीश, उच्च न्यायालय, नया दिल्ली
सूचना एवं आवश्यक कार्यवाही हेतु
मुख्य न्यायाधीश

S.K. Nayak PW 288
M. Rao. PW 288

Filed
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