

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.574/2008
M.A.No.530/2008
M.A.No.531/2008

Order Reserved on: 29.10.2015
Order pronounced on 03.11.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K.Sinha, Member (A)

1. Sh. Shanti Prasad,
S/o Sh. Jogeshwar Prasad
Aged about 37 years
2. Sh. Rajeinder Singh,
S/o Sh. Hari Chand
Aged about 44 years
3. Sh. Rishi Pal,
S/o Sh. Ramesh Chand
Aged about 37 years
4. Sh. Mangtey Ram,
S/o Sh. Lakhi Ram
Aged about 37 years
5. Sh. Nagender Kumar,
S/o Sh. Bal Bahadur
Aged about 38 years
6. Sh. Om Prakash,
S/o Sh. Ram Singh
Aged about 37 years
7. Sh. Bir Singh,
S/o Ram Singh

Aged about 41 years

8. Shri Muneshwar Prasad,
S/o Sh. Bhiku Mal
Aged about 37 years
9. Sh. Jokhu Prasad,
S/o Sh. Ram Bahar
Aged about 42 years
10. Sh. Ved Pal
S/o Sh. Gyan Singh
Aged about 38 years
11. Sh. Charan Singh,
S/o Sh. Nakasi
Aged about 37 years
12. Sh. Johar Singh,
S/o Sh. Gokal Singh
Aged about 42 years
13. Sh. Satvir,
S/o Sh. Gyan Singh
Aged about 39 years
14. Sh. Ramvir Singh,
S/o Sh. Sudan Singh
Aged about 37 years
15. Sh. Jagvir Singh,
S/o Sh. Jai Pal
Aged about 37 years
16. Sh. Dev Narayan,
S/o Sh. Gopal Nath
Aged about 43 years
17. Sh. Ram Phal,
S/o sh. Swami Nath

Aged about 37 years

18. Sh. Raj Bahadur,
S/o sh. Kallu Ram
Aged about 41 years
19. Sh. Om Pal,
S/o Sh. Jai Pal
Aged about 45 years
20. Sh. Raj Pal,
S/o Sh. Kiranpal Singh
Aged about 44 years
21. Sh. Ram Kalp,
S/o Sh. Mata Din
Aged about 43 years
22. Sh. Amar Singh,
S/o Sh. Nem Singh
Aged about 38 years
23. Sh. Raj Bahadur,
S/o sh. Ganga Din
Aged about 43 years
24. Sh. Shri Munender Kumar,
S/o Sh. Sukhbir,
Aged about 46 years
25. Shri Shishpal,
S/o Sh. Jai Pal
Aged about 45 years

(all are retrenched as Temporary Status. Mallies vide letter dated 30/01/2014 issued by the Dy. Director of Hort. Hort. Division-VI, CPWD, Manesar (New Delhi).

.. Applicants

(By Advocate: Shri M.K.Chaudhary)

Versus

1. Union of India through
The Secretary,
Ministry of Urban Affairs and
Employment,
Nirman Bhawan,
New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.
3. The Addl. Director of Horticulture,
Directorate of Horticulture,
CPWD, I.P. Bhawan,
New Delhi-110 002. .. Respondents

(By Advocate: Sh. R.N. Singh, Advocate)

ORDER**By V. Ajay Kumar, Member (J):**

The applicants, who were originally appointed as Beldar/Mali etc. on Daily Wage basis and later on acquired temporary status, in NSG project of CPWD, and whose services were retrenched by the respondents for want of work, filed the present OA No.574/2008, which was earlier dismissed vide order dated 12.05.2010 on merits and RA-260/2010 in OA 574/2008 was also dismissed vide order dated 24.02.2011. The Hon'ble High Court of Delhi in its order passed in W.P.(C) No.8868/2011, & C.M.No.20039/2011 filed against the order passed in RA 260/2010 in OA 574/2008 observed as follows:-

"4. The case which was projected by the petitioners in the review petition in nutshell was that persons junior to the petitioners, who were employed in the same project as the petitioners, were still allowed to continue and were working in some other projects whereas the services of the petitioners were retrenched. This act of the respondents, according to the petitioners, was in complete violation of the judgment of the Supreme Court in Union of India Vs. Mohan Pal and Ors. (2002) 4 SCC 573. This review petition has been dismissed by the learned Tribunal vide order dated 24.02.2011. Reading of the said order would reveal that Tribunal has extracted paras 11 to 13 of its order dated 12.05.2010 passed in O.A. and on that basis it has observed that all the arguments of the petitioners were extensively discussed and dealt with while passing order dated 12.05.2010.

5. We are unable to agree with this reasoning of the Tribunal. For this reason, we have specifically extracted paras No.4 to 7 of the review petition and we find that the facts which are pointed out in these paras in the review petition were not dealt with in the main order dated 12.05.2010.

6. No doubt, the Tribunal has accepted the case of the respondents that the petitioners were only conferred with the temporary status and further that they were appointed in a specific project and which project was completed in the year 2002 and after the two years maintenance period, the same was handed over to NSG. If the matter is to be looked into on these aspects, may be the Tribunal was right to observe that the petitioners have no right either for regularization or to seek work in any other project from the respondents. However, when specific plea was raised that persons junior to the petitioners who were working on the same project with the petitioners were accommodated in other projects, we are of the opinion that this aspect should have been dealt with by the Tribunal while dealing with the review application. On this ground alone, we set aside the order dated 02.02.2011. We may clarify that we have not dealt with the ground raised aforesaid by the petitioners in the review petition on merits and the order is set aside simply because of the reason that this aspect is not dealt with by the Tribunal. It would be for the Tribunal to deal with this aspect and take a particular view in accordance with law."

2. Accordingly, the RA No.260/2010 was remanded to this Tribunal for fresh hearing, to the extent indicated by the Hon'ble High Court. This Tribunal, after hearing the RA on the point of remittance, allowed the same by order dated 12.03.2014 by setting aside the Order dated 12.05.2010 in OA No.574/2008 and directed to list the OA for fresh adjudication.

3. After the OA is reopened, as observed above, both sides were permitted to file the relevant documents along with additional

affidavits, on the issue on which the review is allowed. Both sides filed additional affidavits along with certain documents.

4. Heard Shri M.K.Choudhary, the learned counsel for the applicants and Shri R.N.Singh, the learned counsel for the respondents, and perused the pleadings on record.

5. Shri M.K.Choudhary, the learned counsel appearing for the applicants, at the threshold, fairly submitted that this Tribunal, while passing the order dated 12.05.2010 in this OA, not considered the issue of delay in filing the OA and the MA No.531/2008 filed for seeking condonation of delay and also the MA No.530/2008 filed under Rule 4(5)(a) of the CAT (Procedure) Rules, seeking to file single OA by all the applicants were also not disposed of, hence, appropriate orders are required to be passed in both the MAs also along with the issue now to be decided. Accordingly, arguments were heard on both the MAs also.

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6. In the circumstances and since the cause of action is common and similar, **the MA is allowed.**

M.A.No.531/2008:

7. The applicants, in the OA, prayed for the following:

(a) "Call for the records of the case.

(b) Quash and set aside the impugned order Nos.24(5)/HD-VI/NSG/2003-04/62 to 86 dated 30/01/004 (Annexure A/1 Colly)

- (c) Direct the respondents to regularize the services of the applicants in conformity with the directions issued by this Hon'ble Tribunal vide its order dated 3/2/2000 in O.A. No.783/1999 which was upheld by the Hon'ble High Court of Delhi in W.P.(C) No.3763/2000 vide its judgement and order dated 17/7/2000 and further upheld by the Hon'ble Supreme Court in SLP No.CC 240/2001 vide judgement and order dated 22/1/2001 and as per the observation made by this Hon'ble Tribunal at para 11 of the order dated 27/5/2003 in O.A.No.672/2002.
- (d) Direct the respondents to pay all the consequential benefits from the date the applicants were not paid the emoluments after grant of temporary status and by issuing illegal retrenchment impugned orders.
- (e) Award exemplary costs of the proceedings.
- (f) Pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

8. The impugned Annexure A1 (Colly.) termination orders were passed on 30.01.2004 and whereas the OA is filed on 11.03.2008. The learned counsel for the applicants submits that the Writ Petitions (C) No.8863-86/2003, filed by the applicants questioning the order dated 27.05.2003 in OA No.672/2002 regarding non-granting of the regular pay scales to the applicants, were pending when the impugned termination orders were passed and that the Hon'ble High Court issued interim directions in the said Writ Petitions, that the applicants' services shall not be dispensed with till the disposal of the WPs, and finally WPs were dismissed as withdrawn on 20.09.2007, giving liberty to assail the impugned retrenchment orders before this Tribunal, along with application for condonation of delay. Again, due to the non-availability of the counsel for the applicants in view of his father's hospitalization, the applicants could not obtain the certified copy immediately. Hence, he prayed for condonation of delay in filing the OA.

9. Per contra, Shri R.N.Singh, the learned counsel for the respondents, contend that no specific period of delay is calculated and that the reasons given are not sufficient for condoning the delay and accordingly prayed for dismissal of the MA.

10. The Hon'ble High Court of Delhi while dismissing the WP (C) Nos.8863-86 of 2003 as withdrawn, observed as under:

"WP(C) No.8863-86/2003 and CP Appl. No.13944/2003, 1328/2004, 11427/2004 and 13474/2006.

The petitioners had earlier filed OA No.783/99 before the Central Administrative Tribunal, Principal Bench, New Delhi, claiming temporary status, which was granted earlier but later withdrawn. That OA was decided on 3.2.2000 directing the respondents herein to grant temporary status to the petitioners and also to consider their case for regularisation as per the seniority and subject to availability of vacancies in future as per the OM dated 10.9.1993.

The respondents had preferred civil writ petition against that order, which was dismissed by this Court and even the SLP filed by the respondents was dismissed by the Supreme Court. The petitioners wanted the pay scales granted to the regular employees and, therefore, filed second OA being OA No.872/2002. The said OA is dismissed vide judgment dated 27.5.2003 on the ground that the petitioners were not working on regular basis.

Challenging that order, present petition is filed. However, in the counter affidavit filed by the respondents, the respondents stated that the services of the petitioners, who were working on casual/ad hoc basis, have already been retrenched. The petitioners made submission in this behalf on 25.1.2005 and on that date, this Court passed the order that till the writ petition is decided, services of the petitioners shall not be dispensed with by the respondent. Review petition is filed by the respondents, inter alia, stating that the services of the petitioners had already been dispensed with before passing of the order dated 25.1.2005.

Since the termination of services of the petitioners herein provides fresh cause of action and if the petitioners are aggrieved by their termination, proper course for them is to file application under Section 19 of the Administrative Tribunal Act before the Tribunal in the first instance in view of the judgment in the case of L.Chandra Kumar Vs. Union of India and Ors., AIR 1997 SC 1125. Confronted with this petition, learned counsel for the petitioners seeks liberty to withdraw this petition, as the question of payment of salary of the petitioners. He submits that liberty be given to the petitioners to challenge the order of termination and seek other consequential reliefs before the Tribunal. Liberty granted. In view of the orders dated 25.1.2005, as

mentioned above, the petitioners shall also be entitled to move application for condonation of delay and as the matter was pending and sub judice before this Court during all this period, we are hopeful that the learned Tribunal shall condone the delay having regard to the aforesaid circumstances. The writ petition is dismissed as withdrawn. All pending applications shall also stand dismissed."

11. In view of the above categorical observations made by the Hon'ble High Court, and in view of the reasons submitted by the applicants and in the interest of justice, **the MA is allowed** and the delay in filing the OA is condoned.

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12. Both the counsels, submitted that, in view of the orders of the Hon'ble High Court dated 20.12.2011 in WP (C) No.8868/2011, though the order dated 12.05.2010 was set aside and the OA is restored for fresh hearing, the only issue to be considered now is whether any of the juniors to the applicants, who were working on the same project with the applicants were accommodated in other projects or whether regularized, and restricted their contentions on the said issue only. Accordingly, except the seminal facts, required for this purpose, the other issues are not stated and considered.

13. The learned counsel for the applicants submits that all the applicants were originally engaged by the respondent-CPWD as casual Malis, Beldars, Helpers and Khalasis on hand receipt basis in Horticulture Division, Electrical and civil wing at Manesar, on various dates between 14.02.1989 to 17.05.1989. In terms of a DoPT Scheme of 1993, temporary status was conferred on all the applicants w.e.f. 10.09.1993, initially, vide Office Memorandum dated 03.10.1994

(Annexure A/2), however, the same was withdrawn subsequently. When the said action was challenged, this Tribunal, in OA No.783/1999 while quashing the said orders of withdrawal of temporary status, also directed that prayer for regularization of applicants shall be entitled to be considered, subject to eligibility and availability of vacancies strictly in their turn and as per seniority. The OA No.872/2002, filed seeking regular pay scale, was dismissed on 27.05.2003 and the Writ Petition Nos.8863-86 of 2003 filed against the same were dismissed as withdrawn on 20.09.2007 (Annexure A8), by granting liberty to question the retrenchment orders passed during the pendency of the Writ Petitions. Accordingly, the present OA is filed seeking quashing of the retrenchment orders and also for regularization.

14. The learned counsel submitted that in paras 4.11 to 4.16 of the OA, and also by way of additional affidavits, specific grounds with regard to continuation and regularization of the persons, who were juniors to the applicants and originally appointed on hand receipt basis as daily wage employees and were later conferred with temporary status, like the applicants herein and not extending the said benefit to the applicants and the consequential arbitrary action and violation of Articles 14 and 16 of the Constitution of India, were raised, but the respondents either in their main counter or in the various additional affidavits filed by them failed to give any specific reply to the said contentions. Accordingly, the learned counsel prayed for taking adverse inference in favour of the applicants.

15. The learned counsel placed reliance on a recent Judgement of the Hon'ble Apex Court dated 15.05.2015, passed in Civil Appeal No.4474/2015 in **Prem Ram v. Managing Director, Uttarakhand, Pey Jal and Nirman Nigam, Dehradun and Others.**

16. The learned counsel for the respondents, on the other hand, prayed for dismissal of the OA on the following grounds:

- i) The applicants not only prayed for quashing of the retrenchment orders, but also prayed for continuation and regularization. If the OA averments are accepted, the applicants can be continued or regularized, subject to availability of work and after retrenching/ terminating the alleged juniors and in such an event, the said alleged juniors will be affected and prejudiced. Hence, the OA filed without making any such alleged juniors as party-respondents, is liable to be dismissed on the ground of non-joinder of necessary and affected parties.
- ii) In the respondent-CPWD, no rules/scheme for regularization is in existence and in the absence of the same, the applicants or any other employee can be considered for regularization. Even if any of the juniors to the applicants or any other employee was regularized wrongly, the applicants cannot claim negative equality, as the same is not permissible as per the settled law.

iii) The learned counsel mainly contended that the applicants were engaged as Malis in the Horticulture Division on hand receipt in the National Security Guards (NSG) Project at Manesar, Gurgaon for its maintenance work. After the said project work is completed and the maintenance work was taken over by the DG(NSG), all the workers, employed at the said NSG project became surplus and as there was no work at the said project and no vacancies were existed in CPWD at that time in any other place, and as there was no alternative, the services of the applicants and others were retrenched as per rules. No juniors to the applicants, i.e., who were engaged on hand receipts, subsequently to the applicants, at NSG Project, Manesar, were either continued or regularized. If certain others who were engaged in any other project, in any other capacity, such as Drivers, etc., were continued or regularized, the applicants cannot claim parity with them. No project wise seniority list of casual workers was maintained, and hence, the reliance of the applicants on Annexure A/10 and Annexure A/11, seniority lists, of the OA, and Annexure A/1 (Colly.) statements and and Annexure A/2, seniority list, of the additional affidavit dated 07.10.2014, whereunder different category of employees such as Beldar, Khalasi, Mali, Driver, etc. in different Divisions, Projects and Circles, were clubbed, cannot confer any right on the applicants in view of the fact

of availability of work in a particular project and requirement of particular category of employees.

17. The learned counsel for the respondents, to buttress his contentions, placed reliance on the following Judgements:

1. Surinder Prasad Tiwari v. U.P.Rajya Krishi Utpadan Mandi Parisad & Others, (2006) 7 SCC 684.
2. Secretary, State of Karnataka & Others v. Uma Devi (3) and Ors., (2006) 4 SCC 1.
3. Post Master General, Kolkata & Ors. v. Tutu Das (Dutta), (2007)6 SCALE 453.
4. Indian Drugs & Pharmaceuticals Ltd. Vs. Workman, Indian Drugs & Pharmaceuticals Ltd., JT 2006 (10) SC 216.
5. State of M.P. & Ors. v. Lalit Kumar Verma, AIR 2007 SC 528.
6. Hindustan Aeronautics Ltd. v. Dan Bahadur Singh & Others, (2007) 6 SCC 207.
7. NHRC & Anr. v. Sheenu Saxena & Ors., W.P.(C) No.1268/2012, decided by Hon'ble High Court of Delhi on 01.06.2012.
8. National Institute of Health Family Welfare New Delhi v. Ramji Lal & Ors., (2002) VII AD (Delhi) 240.
9. Union of India & Ors. v. Sheela Rani, 2006 (13) SCALE 394.
10. Gangadhar Pillai v. Siemens Ltd., (2007) 1 SCC 533.
11. Official Liquidator v. Dayanand & Ors., 2008 (13) SCALE 558.
12. S.I.Roopal & Another v. Lt. Governor through Chief Secretary, Delhi and Others, AIR 2000 SC 594.

18. In view of the above rival contentions, we have carefully perused the Annexure A10 and A11, i.e., seniority list dated 09.12.2002 of the

hand receipt workers of Delhi Unit w.e.f. 19.11.1985 to 01.01.2002 and seniority list dated 27.03.2006 of hand receipt workers of Delhi Unit, respectively. Also perused Annexure A1 (Colly) and Annexure A2 (attached to the additional affidavit filed on 07.10.2014) , i.e., Statements 1 and 2 and seniority list of different categories of W.C. staff under Directorate of Horticulture, CPWD, New Delhi as on 30.09.2003.

19. In Annexure A10, the names of the applicants were shown from Sl. Nos.136 to 165. Against their names, it was mentioned that their designation was Beldar and they were attached to the Office of Horticulture Department, and that their date of first engagement falls on various dates between 14.02.1989 to 17.05.1989. In Annexure A11, which was issued after the retrenchment of the applicants, i.e., on 27.03.2006, the names of the applicants are not shown. Annexure A1 (Colly.) [attached to the additional affidavit], statements are not seniority lists and that they are the lists of hand receipt workers, who filed CAT cases and those who have not filed CAT cases, and that too without any specific date on which the same were prepared. In Annexure A2, i.e., the seniority list of different categories of W.C. staff under Directorate of Horticulture, CPWD, New Delhi, though under Sl.Nos.3432 to 3441, i.e., the seniority numbers of whole CPWD and PWD, whose date of initial appointment is from 26.03.1989 to 19.08.1991, i.e., subsequent to the initial dates of engagement of the applicants, but it is not forthcoming whether they belongs to NSG Project or to some other Project.

20. It is not in dispute that the applicants were engaged as hand receipt workers, in the NSG Project undertaken by CPWD. Once the project work was completed, the persons who were engaged for the said project cannot have any right to compel the respondents to engage them in any other project or to regularise their services. Further, if certain persons, who were engaged in a particular capacity, in a particular project, were either continued or engaged in another project or work, in view of the availability of work to that particular category, others such as the applicants cannot have indefeasible right either for continuation or regularization.

21. The examination of the aforesaid common seniority lists of different categories of employees, in different projects and divisions, supports the contentions put forth by the respondents that none of the juniors to the applicants, who were engaged in NSG Project in the same capacity, were regularized.

22. Further, even S/Shri Devender Tiwari and Surender Singh were appointed on permanent basis, in pursuance of the directions of the Tribunal in a OA filed by them.

23. It is also not in dispute that the services of the applicants were dispensed with even before the Hon'ble High Court passed interim orders for their continuation, and accordingly the impugned retrenchment orders were given effect to.

24. It is now well settled that no Court or Tribunal can issue directions to regularise the services of any employee except in certain

circumstances. As rightly contended by the respondents, in **Prem Ram** (supra) directions were given for regularization of the services of the appellant therein, in terms of the Regularization Rules, 2011 of the Government of Uttarakhand and since no such Rules or Scheme was in existence in respondent-CPWD, the said decision has no application to the facts of present case.

25. In the circumstances and in view of the aforesaid discussion, we do not find any merit in the OA, and accordingly, the same is dismissed. No order as to costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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