

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.892 OF 2014

New Delhi, this the 26th day of April, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

1. Abhay Kumar,
S/o Abdhesh Kumar Labh,
C/o Rajesh Kumar,
Qr.No.262, Sector 3,
Pushp Vihar,
New Delhi 110017
2. Shadab Alam,
#306, Kaveri Hostel,
J.N.U., New Delhi 110067
3. Virender Kaushik,
G-3/82, Sector 15,
Rohini, Delhi 110089
4. Mohd. Saleem,
C/o Anil Kumar,
133A/9, Kishan Garh,
Vasant Kunj, New Delhi
5. Vaibhav Sahni,
RR-13, First Floor,
Back Side Miyonwali Nagam,
New Delhi 110087
6. Mohammad Mahatabalam,
328, Sutlej Hostel,
JNU, ,New Delhi 110067
7. Dheeraj Koundal,
House No.170, Diara,
Sector-Bilaspur,
Himachal Pradesh 174001

8. Abdul Rahman,
House No.835,
Harikesh Nagar,
Tilpat Faridabad 212003 Applicants

(By Advocate: Mr.Amit Verma)

Vs.

1. NTRO-Chairman,
Old JNU Campus,
New Delhi 110067

2. Centre Director,
CFOG/CMS, Aya Nagar,
New Delhi 110047

3. Coordination (In Charge),
CMS/CPOG Aya Nagar,
New Delhi 110047

4. Chief Administrative Officer,
NTRO, Old JNU Campus,
New Delhi 110067 Respondents

(By Advocate: Mr.Rajesh Katiyal)

ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicants have filed the present O.A. seeking the following reliefs:

- (i) Pass an order or direction directing the Respondents to forthwith decide Re-appointment/regularization of the Applicants and confirm their Re-appointment/regularization with effect from initial joining at CMS in order to enable the Applicants to continue in the services; and
- ii) Pass further order thereby directing the respondents to pay back the pay scale/grade pay difference amount along with other pecuniary benefits to the applicant;
- iii) Respondent may be directed to pay exemplary compensation to the applicant for his long harassment, humiliation, embarrassment, and social downtrend; and

iv) Any other order or direction as may be deemed just, proper and fit in the facts and circumstances of the case may be passed in favour of the applicant and against the respondents in the interest of justice.ö

2. The brief facts of the applicants' case are that in the year 2008, the respondents selected and engaged them to work as Casual Monitors in the Central Monitoring Services (CMS), National Technical Research Organization (NTRO), Aya Nagar, New Delhi. They uninterruptedlly worked as casual Monitors from 2008 to September 2013. The respondents stopped assigning any duty to them from 1.10.2013 onwards without issuing any prior notice. Their repeated approaches to the respondents having yielded no response, the applicants filed W.P.(C)No. 787 of 2014 before the Hon'ble High Court of Delhi. The Hon'ble High Court, by its order dated 3.2.2014, dismissed the said writ petition, as withdrawn, with liberty to the applicants to approach this Tribunal. The Hon'ble High Court observed that while considering the claim of the applicants, the Tribunal would keep in mind the principle set forth by the Division Bench of the Hon'ble High Court of Delhi in *Govind Singh Rana and Ors, etc. Vs. National Technical Research Organization*, W.P. (C) Nos. 2412 & 2413 of 2012, decided on 7.1.2013. Hence, the present O.A. was filed by the applicants seeking the reliefs as aforesaid.

3. In their counter reply, the respondents have stated that the NTRO is a premier apex scientific organization under the National Security Advisor in the Prime Minister's Office, India. The NTRO is a highly specialized technical intelligence agency, and acts as a super-feeder agency

for providing information to other agencies on internal and external security matters. CMS merged with Centre for OSINT Production (COP) and rechristened as Centre for Focused OSINT Generation (CFOG) as per the need of the organization. Generally, the organization engages casual assignees on ~~as and when required basis~~. The applicants were engaged for some days in a month on purely casual basis as per requirement. Initially, the period of engagement was up to 10 days in a month. Subsequently, it was increased up to 15 days in a month. The applicants and others, who were engaged on purely casual basis, were required to fill in claim forms for each month. Condition no.5 of the claim form stipulated that number of bookings would depend on the performance of the assignee, and in case his/her performance/conduct is found unsatisfactory, the booking may be discontinued without any notice. By order dated 23.7.2013(Annexure R/4), the competent authority constituted a Board of Officers to assess the suitability of the Casual Editors, Linguists and Monitors for empanelment in CMS, Aya Nagar. The said officers knew the working patterns of the organization. The respondents informed the applicants and others about the assessment of their suitability by the Board of Officers. The applicants and others also signed the Assessment Sheet (Annexure R/2). Whosoever was unable to attend the assessment on the given date, the Board called him/her again as per his/her convenience to avoid any issue/controversy later on. The Board of Officers prepared a detailed report of assessment of all casual assignees including the applicants. The respondents approved the names of

the casual assignees as per the recommendations of the Board of Officers and need of the organization. The selection of the candidates for empanelment was made purely on the basis of their merit and performance duly adjudged by the Board of Officers. The applicants were not called for duty from 1st October 2013 onwards, as they were not empanelled.

3.1 In their additional affidavit filed on 11.8.2015, the respondents have stated that the CFOG was closed in May 2015, and Casual Editors, Monitors and Typists, who were working in CFOG, Aya Nagar, New Delhi, and Field Unit at Kolkata, were de-empanelled/disengaged, vide order dated 08.05.2015 (Annexure R/3).

4. No rejoinder reply has been filed by the applicants.

5. We have carefully perused the pleadings, and have heard Shri Amit Verma, the learned counsel appearing for the applicants, and Shri Rajesh Katiyal, the learned counsel appearing for the respondents.

6 Shri Amit Verma, the learned counsel appearing for the applicants, relied on the judgment dated 7.1.2013 passed by the Hon'ble High Court of Delhi in *Govind Singh Rana and Ors, etc. Vs. National Technical Research Organization*, W.P. (C) Nos. 2412 & 2413 of 2012, to contend that the Board of Officers and the respondents, while assessing the suitability of the applicants for empanelment, have not only acted arbitrarily and illegally in not following the principle of *last come first go* but also in ignoring the long working experience of the applicants and in de-empanelling them for engagement after September 2013. Therefore,

appropriate direction should be issued to the respondents to re-engage the applicants by giving them preference over fresh hands, and also to regularize their services.

6.1 In *Govind Singh Rana and Ors, etc. Vs. National Technical Research Organization* (supra), the petitioners were not given casual employment as they were de-empanelled by the respondent-organization. They claimed re-engagement on casual basis as well as regularization of their services. Following the Constitution Bench decision of the Hon'ble High Court reported as 2006(4) SCALE 197, *Secretary, State of Karnataka Vs. Uma Devi & Others*, which prohibited the courts from issuing direction to regularize ad hoc, temporary or daily wage employees, the Hon'ble High Court declined to entertain the petitioners' claim for regularization. However, considering the claim of the petitioners for re-engagement on the principle of 'last come first go', the Hon'ble High Court observed and held as follows:

59. Whatever be the duration of the contractual appointment, we see no reason as to why those who have served the organization as daily wage employees be not given preference over fresh hands. After all, experience matters in life.

10. We dispose of the writ petition issuing a mandamus to the respondents that henceforth while making contractual appointments preference should be given to those who have worked with the respondent as daily wage employees and even within the daily wage employees preference would be as per length of service rendered. In other words, with reference to its records the respondent would draw up a list of those who were given employment as daily wages with reference to the date on which initial daily wage appointment was given.

11. This would mean that some kind of a seniority list of daily wage employees would be drawn up. While making contract appointment, if found suitable, employment would be offered on contract basis giving preference the old hands.ö

7. *Per contra*, Shri Rajesh Katiyal, the learned counsel appearing for the respondents, submitted that as the duly constituted Board of Officers, which assessed the suitability of the applicants and other casual workers, did not recommend the applicants for being engaged after September, 2013, and the applicants were de-empanelled by the respondents, the applicants have no right to claim re-engagement on casual basis and/or regularization of services. It was also submitted by Shri Rajesh Katiyal that as the CFOG and its units have already been closed down since May 2015, and all the casual workers have been de-empanelled/disengaged, the question of giving any preference to the applicants over fresh hands on the principle of last come first goö or maintaining any seniority list of daily wage employees does not arise.

8. From the materials available on record, we have found that prior notice was given by the respondents to the applicants and other similarly placed casual employees about assessment of their suitability by the Board of Officers. On the basis of assessment report submitted by the Board of Officers, the respondents did not empanel the applicants for engagement after September 2013. When the applicants were not recommended by the Board of Officers, and when the respondents empanelled the required number of candidates in order of merit as assessed by the Board of Officers, and when no person placed below the applicants in

the merit list prepared by the Board of Officers was engaged after September 2013, the applicants cannot be said to have any grievance. In our considered view, a disengaged casual worker cannot be allowed to claim preference over fresh hands in the matter of engagement on the principle of *last come first go*, if the performance/conduct of the said casual worker is not satisfactory, and he/she is otherwise found unsuitable for further engagement on casual basis. In *Govind Singh Rana and Ors, etc. Vs. National Technical Research Organization* (supra), it has not been laid down by the Hon'ble High Court that despite being de-empanelled on account of his/her unsuitability, a disengaged casual worker has a right to be given preference over fresh hands by the employer in the matter of engagement on the principle of *last come first go*, and has also a right to be included in the seniority list of casual workers to be maintained by the employer. Thus, the decision in *Govind Singh Rana and Ors, etc. Vs. National Technical Research Organization* (supra) does not come to the aid of the applicants in the present case.

9. The other aspect of the matter is that the CFOG and its units, where the applicants were engaged to work on casual basis, and where they now seek re-engagement on casual basis, and regularization of their services, have already been closed down in May 2015. The casual employees working in the CFOG and other units have also been de-empanelled/disengaged since May 2015. This position indicated by the respondents in their additional affidavit has not been refuted by the applicants. In the above view of the

matter, we do not find any substance in the claim of the applicants for re-engagement on casual basis and/or regularization of service.

10. In view of the Constitution Bench decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka Vs. Uma Devi & Others*(supra), we have also found no substance in the claim of the applicants for regularization of their services.

11. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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