

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**O.A No.100/1722/2015**

**New Delhi this the 14<sup>th</sup> day of December, 2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)**

**Hon'ble Mr. P.K. Basu, Member (A)**

Hriday Ram  
S/o Late Shri Ram Newal  
Age 45,  
Govt. of India Press Canteen,  
Ring Road, Maya Puri,  
New Delhi. ..Applicant

(Argued by:Mr. U. Srivastata, Advocate)

Versus

Union of India through

1. The Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
2. The Director of Printing,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
3. The Manager,  
Govt. of India Press Canteen,  
Ring Road, Maya Puri, New Delhi. . Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

**ORDER (ORAL)**

**Justice M.S. Sullar, Member (J)**

The contour of the facts and material, which needs a necessary mention for deciding the core controversy involved in the instant Original Application (OA), as claimed by the applicant, Hriday Ram, and emanating from the record, is

that, he was duly engaged as a casual labour by the respondents/Canteen Management Committee, during the period 1974-76. Thereafter, his services were disengaged without any reason. He has been approaching the respondents time and again. Ultimately, his services were reengaged as casual labour w.e.f. 06.02.1986 and till then, he has been working continuously even without any break. He requested the respondents to regularise his services, but in vain, which necessitated him to file **O.A.** bearing **No.1537/1998**, in which the respondents were directed to consider his case for regularisation w.e.f. 06.02.1986 treating him as a deemed Government servant, as per OM dated 11.10.1991, vide order dated 02.02.1999, by this Tribunal, but his services were not regularised by the respondents.

2. As a consequence thereof, applicant filed another **OA** bearing **No.2981/2002**, in which the respondents were again directed to finalise his case for regularisation of his services, vide order dated 18.11.2002 of this Tribunal. In compliance thereof, the respondents did not regularise the services of the applicant and rejected his representation, vide order dated 07.04.2003.

3. Sequelly, thereafter, he filed another **O.A.** bearing **No.2772/2003**, challenging the order dated 07.04.2003. The impugned order (therein) was set aside and respondents were directed to consider his claim for regularisation of his

services, vide order dated 02.08.2004 (Annexure-1) by this Tribunal.

4. The respondents challenged the order by filing **Writ Petition ( C) 7400/2005**, which was disposed of, vide order dated 02.02.2006 (Annexure A-2) by the Hon'ble High Court of Delhi. In compliance thereof, the respondents did not regularise the services of the applicant, on account of non-availability of vacancy at that point of time and assured to consider his case in future, as per rules. Meanwhile, one vacancy became available w.e.f. 17.06.2011, on account of death of one Chander Bhan, Ex-Bearer. The applicant again approached the respondents to consider his case, in terms of directions of Hon'ble High Court of Delhi, but in vain.

5. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned action of the respondents, on the following grounds:-

1. That the applicant who had been initially engaged and working with the respondents during the period 1974-76 was disengaged has been subsequently reengaged w.e.f. 09.04.85 after completion of all he required formalities in accordance with the relevant rules and instructions on the subject and still continuing without any break.
2. That the applicant has been serving with the respondents to the entire satisfaction of his superior officials and having his unblemished service records.
3. That the applicant has been approaching to the respondents for regularisation in services through representations followed by reminders, personal visits and even through court cases i.e. OA No. 1537/98 decided on 02.02.99, OA No.2981/02 decided on 18.11.02 and even in OA No.2772/03 decided on 02.08.04 against which the WP(C) 7400/05 filed by the respondents was disposed off in favour of the applicant in the manner which is deliberate, biased, perverse, illegal, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, violative of articles 14, 16 & 21 of the Constitution of India and against the mandatory provisions of law.

4. That the issue herein i.e. regularisation in services has already been dealt with by their lordships even upto high court and a specific and very categorical direction has been issued while deciding the WP(C) 7400/05 directing the respondents that the case of the **applicant shall be considered for regularisation against an appropriate vacancy in accordance with the provisions of rule by exercising the power of relaxation made available to the competent authority under the rules** but through the respondents have been still utilizing the services of the applicant, there is nothing.

5. That the respondents issued an order vide its dt. 10.07.06 in compliance of the directions of the Hon'ble High Court dt. 02.02.06 in WP(C) 7400/05 and it reveals from the same that the case of the applicant has not been considered in its real spirit but it is contrary to the direction issued by the Hon'ble High Court to the extent that the very mandate exercising the power of relaxation which is made available to the competent authority has totally been misplaced deliberately, biased, perverse and in arbitrary manner.

6. That it is a case of legitimate expectations as well as exploitation as the applicant who is having services from 1974-76 almost two years + about more than 30 years of satisfactory and unblemished services since 09.04.85 to till date but the applicant is getting a meagre income even the minimum wages is not being granted to the applicant.

7. That the applicant is eligible for consideration of his case for extension of the benefits in terms of the DOP&T instructions dt. 11.12.06 as the applicant is fulfilling the terms and conditions as stipulated in the said scheme further the applicant has completed more than 32 years of his satisfactory and unblemished services with the respondents but till date his case has never been considered at all.

8. That it reveals from the face of records that the respondents have been ignoring the case of the applicant for regularisation in his services one after other grounds earlier due to non availability of sanctioned posts and now the reasons best known to them totally ignoring the facts that the applicant is having almost 32 years of his satisfactory services with the respondents out of which since 09.04.85 there is no break in services of the applicant even a single day.

9. That the applicant has been approaching to the respondents time and again to consider his case for regularisation in accordance with the relevant rules and instructions existing on the subject through representations following by personal visits also but till date the same has never been considered and now it has been verbally informed that the case of the applicant can not be considered on the grounds firstly the applicant is over aged secondly there is no sanctioned post against which the applicant is working.

10. That the actions of the respondents not to considering and finalising the case of the applicant for extension of the benefits in terms of DOP&T instructions is illegal, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, against the mandatory provisions of law, in violation of Articles 14, 16 & 21 of the Constitution of India and bad in law.

11. That the case of the applicant is squarely covered by the law laid down by the Hon'ble Supreme Court in case of Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors. decided on 10.04.06 and subsequent consequential OM dt. 11.12.06 issued by Union of India.

12. That the case of the applicant is squarely covered by the law laid down by Hon'ble Supreme Court in case of State of Karnataka and Others Vs. M.L. Kesari & Ors. (2010) 9 SCC 247.

13. That the case of applicants is squarely covered by the law laid down by the Hon'ble Supreme Court in case of Yashwant Hari Katakhar & Others VS. U.O.I. and Others in which it has been held as under:-

"2.....The appellant having served the Govt. for almost two decades it would be unfair to treat him temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Govt. for such a long period....."

14. That the applicant is eligible and entitled for extension of the benefits of DOP&T instructions dated 07.06.1988 which is specifically in the name of 'General terms and condition for employment of casual labourer' as well as the other enlarged schemes issued thereafter in continuance to such instructions namely the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 and now the DOP&T instructions dated 11.12.2006, namely, 'Regularisation of qualified workers appointed against sanctioned posts in irregular manner'.

15. That the case of the applicant is squarely covered by the law laid down by the Hon'ble Supreme Court in case of Jacob M. Puthuparambil & Others Vs. Kerala Water Authority and Others JT 1990 (4) SC 27, the operative part of the same is as under:-

"9. India is a developing country. It has a vast surplus labour market. Large-scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service".

6. Levelling a variety of allegations and narrating the sequence of events of previous litigation between the parties, in all, the applicant claimed that his services are liable to be regularised, in the manner indicated hereinabove.

7. The respondents have refuted the claim of the applicant and filed the reply, wherein it was pleaded, that applicant was engaged initially in the Canteen of Government of India Press in the year 1974 and worked there only for 2 years from 1974 to 1976. He was again reengaged in the year 1986 by the Canteen Management Committee. It was alleged that applicant was not on the roll of the Press in the relevant year, so he cannot claim any benefit from OM dated 09.04.1985. His subsequent engagement was stated to be without the approval of the competent authority. It was pleaded, that even the applicant does not possess the requisite qualification for the post, so he was not eligible for regularisation of his services. However, it was admitted that one post of Bearer became vacant w.e.f. 17.06.2011 on demise of Chander Bhan, Ex-Bearer.

8. Virtually acknowledging the factual matrix & reiterating the validity of the impugned action, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

9. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter, we are of the firm view that the instant OA deserves to be accepted, for the reasons mentioned hereinbelow.

10. What cannot possibly be disputed here, is that, initially applicant was employed on casual basis in the Canteen in the year 1974 and he worked there upto 1976. Thereafter, he was again reengaged on 06.02.1986 in the canteen. Being aggrieved by the non-implementation of the OM dated 11.10.1991, he filed **OA No. 1537/1998**, in which the respondents were directed to consider the case for regularisation of the services of the applicant, treating him as a deemed Government servant, within the meaning of OM dated 11.10.1991 and directions were issued to the respondents to consider his case for regularisation of his services, which would be given effect to w.e.f. 06.02.1986 with difference of salary enhanced from the date not earlier than one year of the filing of the OA, i.e., 10.08.1998 and the consideration would be for accommodation within the sanctioned strength of the 9 employees.

11. As the directions were not complied with, applicant filed another **OA No.2981/2002**, which was decided on 18.11.2002 directing the respondents to dispose of the representation which was rejected, vide order dated 07.04.2003 and his request for regularisation of his services, were turned down by the competent authority. It necessitated the applicant to file another **OA** bearing **No.2772/2003**, in which the impugned order (therein), was set aside and the respondents were directed to consider the case of the

applicant for regularisation of his services, within a period of 3 months from the date of receipt of a copy of that order, vide judgment dated 02.08.2004 (Annexure A-1), by a Single Bench of this Tribunal.

12. Sequelly, the **Writ Petition ( C)** bearing **No.7400/2005**, filed by the Manager, Government of India, challenging the order (Annexure A-1) of this Tribunal, was disposed of by a Division Bench of Hon'ble High Court of Delhi, vide judgment dated 02.02.2006, which in substance, is as under:-

"The aforesaid findings recorded by the learned Tribunal are under challenge in this petition on which we have heard learned counsel appearing for the parties. The respondent was engaged as a casual employee on 06.02.1986 and his service was taken by the Canteen Management Committee purely on casual basis. The Office Memorandum which was issued by the petitioner the Government of India, Directorate of Printing, on 09.04.1985 has laid down in paragraph 2 that head of the Presses were allowed to engage some casual labourers for the canteen work to be paid from contingencies as ad hoc measure. It was also intimated therein that in order to have uniform procedure, Ministry of Works and Housing have issued orders prescribing pay scales for the canteen employees of the statutory canteens established under Section 46 of the Factories Act in the Govt of India Presses. It was specifically mentioned in the said order that those employees could not be treated as government employee and would continue to remain under Canteen Management Committee in the Government of India Presses. It is brought to our notice that the sanctioned staff for the canteen of GIP, Ring Road, New Delhi was only 9 whereas it was laid down in the aforesaid Circular dated 09.04.1985 that no additional staff is to be employed without prior approval of the Directorate. The respondent was engaged as a 10<sup>th</sup> staff member for the canteen and therefore his salary was being paid out of the fund and the sale proceeds of the Canteen. In terms of the aforesaid OM dated 09.04.1985 the respondent continued to be under the Management of Canteen Management Committee in the Government of India Pres. Reference can also be made to the OM dated 11.10.1991 wherein reference is made to the order dated 07.11.1990 of the Supreme Court. In the said order, Supreme Court has held that the employees of the statutory canteen in the Govt. of India Presses should be treated as Government servant w.e.f. 29.08.1985 provided they are within the strength fixed for each press canteen. The learned Tribunal considered the respondent as deemed government servant but the aforesaid circular clearly indicates that he could not have been so declared as government servant as he was not within the strength fixed for each Press Canteen. The Press Canteen where the respondent is working has only provision for 9 approved staff for canteen. Therefore the respondent was not borne in the sanctioned strength fixed for the concerned Press Canteen. We are also informed that the eligibility criteria for appointment as staff of the canteen has now been laid down under the statutory rules framed by the petitioner. It is common case of the parties that the respondent does not meet the criteria for such as of now to be appointed as a staff of the canteen. In



view of the aforesaid position the direction which issued by the Tribunal for considering the case of the respondent for regularisation at this stage is found to be illegal and without jurisdiction for no direction could be given for regularisation in violation of the statutory rules. The petitioner is, however, continue to retain the respondent in the service of the Press by making payment of his salary and other allowances from the sale proceeds of the canteen. We direct accordingly. The petitioner shall also consider the case of the respondent sympathetically in view of the long service rendered by him in the aforesaid canteen. This case of the respondent shall be considered for regularisation against an appropriate vacancy in accordance with the provisions of rules by exercising the power of relaxation which is made available to the competent authority under the rules. While doing so the petitioner shall also consider the ratio/implication of the decision of the Supreme Court in (sic) **Gujarat Agricultural University Vs. Rathod Labhu Bechar & Others (2001) 3 SCC 574.**

In terms of the aforesaid observation and directions the writ petition is disposed of leaving the parties to bear their own costs”.

Admittedly, the order of Hon’ble Delhi High Court has already attained the finality.

13. Meaning thereby, the Hon’ble Delhi High Court has categorically held, that applicant was duly appointed as a casual employee on 06.02.1986 in Canteen of Government of India Press. As per OM dated 11.10.1991 and judgment dated 07.11.1990 of Hon’ble Apex Court, the employee of statutory canteen in the Government of India Presses have to be treated as Government servants w.e.f. 29.08.1985. At the same time, it was ruled that applicant, however, would continue to be retained in service of the Press. Further respondents were directed to sympathetically consider the case of the applicant for regularisation of his services, in view of long service rendered by him in the aforesaid canteen, against an appropriate vacancy in accordance with the provisions of rules by exercising the power of relaxation by the competent authority and in view of the law laid down by

Hon'ble Supreme Court in case ***Gujarat Agricultural University*** (Supra).

14. Therefore, once the Hon'ble Delhi High Court has already decided all the issues, vide judgment (Annexure A-2), the respondents are now estopped from again urging the same very points. Hence, it cannot possibly be saith and now the respondents cannot be heard to say, that the applicant is not entitled for regularisation of his services, as contrary urged on their behalf, particularly when the judgment of Hon'ble Delhi High Court (Annexure A-2) has already attained the finality.

15. As indicated hereinabove, it is not a matter of dispute that one vacancy became available/vacant w.e.f 17.06.2011 on account of death of one Chander Bhan, Ex-Bearer. In that eventuality, it was obligatory on the part of the competent authority to relax the rule and to regularise the services of the applicant w.e.f. 17.06.2011, when the post became available, in compliance of the indicated order of Hon'ble High Court of Delhi.

16. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

17. In the light of the aforesaid reasons, the instant OA is hereby accepted. The respondents are directed to regularise the services of the applicant, after relaxing the rules w.e.f.

17.06.2011 (when the post became available). However, the parties are left to bear their own costs.

**(P.K. BASU)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**  
**14.12.2016**

**Rakesh**