

Central Administrative Tribunal
Principal Bench: New Delhi

**OA No.4727/2014
with
OA No.270/2015**

Reserved on: 06.01.2016
Pronounced on: 19.01.2016

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)**

OA No.4727/2014

1. Rohit Kumar s/o Late Devender Kumar
Group 'D' Casual Labour
R/o D/5/67, Sultan Puri,
New Delhi – 110 086.
2. Deepak Kumar s/o Sh. R.B. Manjhi,
Group 'D' Casual Labour
R/o N-214, Gali No.15,
Sadatpur Extension,
Near Delhi Police Camp,
Karawal Nagar, Delhi – 110094.
3. Dinanath s/o Sh. Janardan Yadav
Group 'D' Casual Labour
R/o 39/465, Panchkuiyan Road,
New Delhi – 110 001.
4. Radha Monah Pandey s/o Late Dev Kumar Pandey,
Group 'D' Casual Labour
R/o E-2/89, Aman Enclave,
Prem Nagar-III, Kirari Suleman Nagar,
Delhi – 110 086.
5. Jitender Kumar s/o Sh. Tek Chand
Group 'D' Casual Labour
R/o C-390 Dakshin Puri,
Dr. Ambedkar Nagar,
Sector-5, Delhi-110 062.
6. Sushil Kumar s/o Sh. Krishna Ram,
Group 'D' Casual Labour
R/o 1567, Laxmi Bai Nagar,
Delhi.
7. Sunil Kumar s/o Sh. Ram Kishan
Group 'D' Casual Labour
R/o H.No.21, Singhu Border,
Delhi-110 040.

8. Amar Singh s/o Sh. Bansi Dhar,
Group 'D' Casual Labour
R/o B-70, Street No.5,
New Govind Pura,
Delhi – 110 051.

9. Kamlesh Kumar Yadav
S/o Sh. Mishri Lal Yadav
Group 'D' Casual Labour
R/o C-2/13, Lodhi Colony,
New Delhi-110 003.

10. Vipin Kumar s/o Sh. Manan Ram,
Group 'D' Casual Labour
R/o H-379, Saurabh Vihar,
Badarpur,
New Delhi-110 044. ...Applicants

(By Advocate: Sh. Ravi Shanker Kumar)

Versus

Union of India through
Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi. ...Respondent

(By Advocate: Sh. Ravinder Aggarwal)

OA No.270/2015

1. Suraj Nagar s/o Sh. Gyan Chand
Working as a Casual Labour
R/o Village & Post, Tigoan,
Distt. Faridabad, Haryana-121001.

2. Kishore S. Rajput s/o Sh. Ajeet Singh,
Working as a Casual Labour
R/o 79, Bamnoli Village,
New Delhi – 110 077.

3. Naresh Khatak s/o Sh. Dayanand,
Working as a Casual Labour
R/o House No.136,
Village & Post Office Nangal Thakran,
New Delhi – 110 039.

4. Manoj Mandal s/o Sh. Suresh Mandal,
Working as a Casual Labour
R/o 11/53, Dakshinpuri,
Dr. Ambedkar Nagar, Sector-5,
New Delhi – 110 062. ...Applicants

(By Advocate: Sh. Ravi Shanker Kumar)

Versus

Union of India through
Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi. ...Respondent

(By Advocate: Sh. Ravinder Aggarwal)

O R D E R

By Dr. B.K. Sinha, Member (A):

The instant two Original Applications i.e. OA No.4727/2014 and OA No.270/2015 relate to a common subject based upon similar arguments and leading to identical relief(s) and, therefore, have been heard together. Hence, both the OAs, being identical in facts and law, are being disposed of by this common order.

2. The facts of OA No. 4727/2014 (***Rohit Kumar & Others versus Union of India***), being the lead case, are being considered representative of the two for the sake of recording of the order. These OAs have been filed against the action of the respondent in not granting extension to the applicants who have been working as casual labourers w.e.f. 03.07.2007, beyond 31.12.2014, without issuing any advance intimation and granting opportunity to the applicants to put forward their case in light of the fact that 93 vacancies of MTS are lying vacant to be filled up by the

respondent, work against which was being regularly taken from the applicants.

3. The facts of the case are that the applicants have been working as Casual Labourers with the respondent-UPSC since 03.07.2007. The applicants were registered with the respective Employment Exchanges. Though it is not their case that they were regularly appointed following due process of selection, rather they submit that they have been doing the work which is generally manned by MTS staff. It is the case of the applicants that initially the respondent used to employ the applicants for 11 months with a break of one month, which was later reduced to break of one day after 89 days of regular work. The applicants further submit that prior to 28.04.2014, 57 casual labourers were employed by the respondent out of which 41 were regularized against regular vacancies of MTS with the approval of the competent authority w.e.f. 28.04.2014. The applicants, being similarly placed, submit that their case had been deferred with clear indication that they would also be regularized in future against regular vacancies of MTS. But now, it has come to their knowledge that their term is not to be extended beyond 31.12.2014. However, they have not been given any written intimation or prior notice to this effect. It is the case of the applicants

that out of the 41 persons regularized vide letter dated 29.04.2014, 10 persons whose names figure at Sl.Nos. 32 to 41 were not having ten years' regular service, while they have been employed on the ground that they were continuously engaged by the respondent-Commission against the erstwhile sanctioned Group-D posts of casual Helper and thereby would be completing ten years or more during the financial year 2014-15 since their initial engagement. Further, it has also been submitted by the applicants in the rejoinder that some of the persons, who have been regularized, have been junior to them and even do not possess the eligibility for being appointed. In the first instance, one Brijesh Kumar, Casual Labour is the junior-most amongst the casual labourers, who were working in the respondent-Commission as MTS on 08.08.2014. Likewise, one Dipu Dass, who has not worked even for a single day in the respondent-Commission and studied upto Middle class only, has been appointed against permanent post of MTS.

4. The learned counsel for the respondent fairly admitted that the mode of appointment adopted in the case of the applicants and the persons, who have been regularized vide order dated 29.04.2014, was clearly against the rules. He also admitted that appointment of the persons concerned

had been made in an improper manner without publishing any advertisement and by just calling them for appointment along with their educational certificates and not following the procedure set forth by the Government for selection in question. The learned counsel for the respondent further admitted that the Hon'ble Supreme Court in ***Secretary, State of Karnataka & Others versus Uma Devi*** [2006 (4) SCC 1] clearly held that giving employment to persons without following the due selection process involving open advertisement and defined mode of selection is violative of Articles 14 & 16 of the Constitution. In para 15 of the aforesaid judgment, the Hon'ble Supreme Court clearly held that in constitutional scheme of public employment, the court for that matter, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. The Hon'ble Supreme Court also deprecated the practice of regularizing such persons not appointed through procedure due as violative of Articles 14 & 16 of the Constitution. The Hon'ble Supreme Court, however, at the same time clarified in para 53 of the judgment, that there may be cases where irregular appointments (not illegal appointments) as

explained in decisions of **State of Mysore versus S.V. Narayanappa** [AIR 1967 (SC) 1071] and **R.N. Nanjundappa versus T. Thimmiah** [1972 (1) SCC 409] and referred to in para no.15 of the judgment, of duly qualified persons in duly sanctioned vacant posts, might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals, but the question of their regularization could be considered as one time measure. This has to be done under a particular scheme to be set in motion within six months from the date of the order. At the same time, the Court put a note of caution that there should be no further bypassing of the constitutional provisions. The learned counsel representing the respondent candidly admitted that these provisions have been given a go by while making regularization of 41 employees, vide order dated 29.04.2014.

5. The grounds adopted by the applicants in their OA include, *inter alia*, the right of legitimate expectations which they have harboured when similarly situated 41 casual labourers have been regularized against the vacancies of MTS; the act of respondent is violative of principles of natural justice; the applicants have rendered continuous service for the last eight years and have earned

appreciation of the respondent; and the applicants are duly qualified and possess requisite experience. The applicants have principally prayed for their regularization against the posts of MTS on the same line on which 41 casual labourers had been regularized vide order dated 29.04.2014.

6. We have considered the pleadings and the documents appended thereto and also heard the arguments advanced on both sides. We are of the view that in the facts of the case and the pleadings of the parties, following issues are relevant to be addressed in these cases:-

- 1. Whether the appointment of applicants and 41 other persons in casual employment regularized vide order dated 29.04.2014 of the respondent was regular in terms of yardstick set forth in the decision of the Hon'ble Supreme Court in Chief Secretary, Karnataka versus Uma Devi (supra)?*
- 2. Whether regularization of 41 employees prima facie constitutes a binding legal precedent?*
- 3. Whether abolition of posts of Group 'D' employees and their substitution by Multi Tasking Staff puts some constraints over their regularization against such existing posts?*

4. What relief, if any, could be granted to the applicants?

7. Learned counsel for the applicants drew our attention to the additional affidavit filed by him stating that a proposal was submitted to the Chairman, UPSC in the following terms:-

“10. It is submitted that at the time of intimating the vacancies in the grade of MTS to the Staff Selection Commission for filling up through direct recruitment, out of 150 vacancies, 60 vacancies were reported. As on date 180 vacancies exist in the grade of MTS. Thus, the regularization process would only fill 41 of these existing regular vacancies. Hence, there will be no financial burden.

11. As regards the remaining 16 Casual Labourers with less than 10 years of service, it is submitted for consideration that their services can be regularized in the Financial Year in which they will be completing ten years of regular service subject to their fulfilling the following conditions:

- a) They have been continuously engaged as CLS depending upon the requirement of the office & the vacancy exist on the prospective date of regularization and they complete 10 years of service as Casual Labourers.*
- b) Their performance during the previous period & also during the remaining period is satisfactory. A performance Report in their respect will be obtained annually from their respective Branch Heads.*
- c) There is no such instance of Indiscipline/ Unauthorised absence/ misconduct on their part.*
- d) There will be probation period of 2 years commencing from the date of regularization and their confirmation will be subject to satisfying completion of probation period.*

8. The learned counsel for the applicants also stated that the proposal for re-consideration of the claim of such applicants, who have completed the requisite ten years of

service, has been approved by the respondent no.1 under the window provided in para 53 of **Secretary, State of Karnataka & Others versus Uma Devi** (supra), and in view of the aforesaid decision, the instant OA has become infructuous.

9. Learned counsel for the respondents submits that this document has also confirmed the stand of the respondents taken in the counter reply and they abide by the same. This decision has been taken on humanitarian ground as the applicants, who have also served for various periods, have become ineligible for most of the vacancies on account of their being overage.

10. We have carefully gone through the pleadings and considered the arguments advanced by the learned counsel for the parties as also the additional affidavit filed. We take note of the main prayer no.(ii), which reads as under:-

“(ii) Direct the respondents to regularize the applicants against the existing vacancies of Multi Task Staff with the respondents in terms of the decision taken by the Competent Authority.”

11. In view of the satisfaction expressed by the learned counsel representing the applicants, we feel that the instant OA has become by and large infructuous as the process has been initiated for consideration of the

applicants' principal demand on humanitarian ground. Therefore, without adjudicating upon the issues framed by us, we dismiss the OA as having become infructuous. In the event the claim of the applicants regarding regularization does not find favour with the respondent-Commission, and the Commission decides to fill up the posts by regular appointment, they may consider to extend them the benefit of age relaxation in view of the fact that they have all through rendered service in the respondent-Commission. There shall be no order as to costs.

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

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(Syed Rafat Alam)
Chairman