

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 23.04.2019

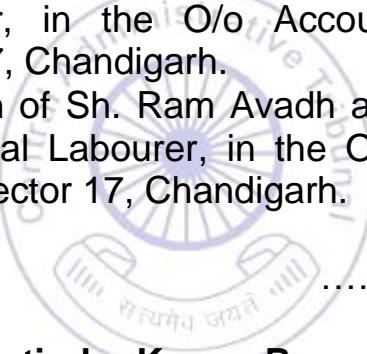
Reserved on : 04.04.2019

OA No. 060/00470/2017

MA No. 060/00832/2017

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)

1. Bhag Singh son of Suba Singh aged about 51 years resident of Village Tole Majra, P.O. Rasanheri, Tehsil Kharar, Mohali.
2. Ajay Kumar son of Ramesh Chand, aged about 32 years, House No. 1133, Ground Floor. A.G. Colony, Sector 41-D, Chandigarh.
3. Pipal Mohammad son of Sh. Naghia Ram, aged about 49 years. Presently working as Casual Labourer, in the O/o Accountant General (A&E), Punjab, Sector 17, Chandigarh.
4. Vijay Uniyal son of Sh. P.D. Uniyal, aged 39 years. Working as Casual Labourer, in the O/o Accountant General (A&E), Punjab, Sector 17, Chandigarh.
5. Raghav Ram son of Sh. Ram Avadh aged 41 years presently working as Casual Labourer, in the O/o Accountant General (A&E), Punjab, Sector 17, Chandigarh.



.....Applicants

BY ADVOCATE: **Sh. Satinder Kumar Rana**

Versus

1. Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
2. Principal Accountant General (Audit), Punjab, Plot No. 20-21, Sector 17, Chandigarh.
3. Accountant General (A&E), Punjab, Sector 17, Chandigarh.

.....Respondents

BY ADVOCATE: **Sh. Barjesh Mittal**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicants have been working in the office of respondent No. 3 as casual labourers since 1996, 2006, 2003, 2007 and 2012 respectively for 240 days in a calendar year. The nature of duty performed is that of Multi Tasking Staff (MTS). Applicants claim parity and similar treatment as per Tribunal order in OA No. 163/CH/2013 decided on 06.03.2017 wherein the respondents were directed to give temporary status and regularization of service to one Sh. Mewa Singh. When respondent No. 3 made a demand under budget head "Wages" for BE 2017-18, respondent No. 1 sought details about the use of this fund. Subsequently, respondent No. 1 pointed out to and recalled the directions of the Government of India on the subject and directed that five daily wagers hired on general basis may be outsourced. Following these directions, the applicants were directed not to report for work from 02.05.2017 onwards. Applicants submit that as per directions in the matter of Gurmukh Singh Vs. UOI, a seniority list of casual labourers has been prepared and is available with the respondents.

2. Applicants also submit that there are 28 vacancies in MTS Cadre and on the basis of seniority, they can be adjusted by regularization against these vacant posts. The prayer of the applicant is for a direction to the respondents to consider them for temporary status/regularization as per Government of India OM dated 10.09.1993.

3. Through an interim order dated 03.05.2017, the respondents were directed to allow the applicants to continue to work till the next date of hearing. However, on the basis of an MA filed by the respondents for vacation of interim order, this order was vacated on 12.05.2017 on the

ground that the facts of the case of Mewa Singh are different from that of the applicants, as persons in Mewa Singh matter were persons who were appointed prior to issue of OM dated 10.09.1993 and covered by the directions in the said OM. Further, the said vacation order also noted that the applicants had earlier approached this court in OA No. 060/476/2015 challenging the notification of vacancies for appointment by direct recruitment and their plea was rejected by this court. The same became the subject matter before the Jurisdictional High Court in CWP No. 6204/2017 which is pending adjudication. The Bench also noted that this petition was barred by order 2 Rule 2 of Code of Civil Procedure because the relief was available to the applicants at that time also which they chose not to avail and therefore, the applicants cannot be allowed to claim the benefit which they could have claimed in an earlier petition. The Bench had also noted the respondents' statement that in the absence of any budget for wages to be paid to the applicants, the applicants cannot be allowed to continue on these posts and their services would therefore have to be dispensed with.

4. The applicant also failed to use the benefit of the respondent advertisement to fill up the post by way of direct recruitment, and pursuant to the selection process, eligible persons who had applied have been offered appointment. In view of this development, the services of the applicants had to be dispensed with.

5. The respondents in the reply statement submit that the applicants in this OA were earlier before the Tribunal and the present OA is not maintainable being barred by res judicata. Applicants No. 1 & 3

Bhag Singh and Ajay Kumar had earlier filed OA No. 476/2015 titled Suresh Pal and Ors. Vs. UOI wherein they have challenged the selection of 157 MTS by ignoring the merits of the applicant who should have been selected based on their qualification and experience. The above OA was disposed of by passing the following order:-

“We have given our careful consideration to the matter. It is evident from the material on record that the applicants are seeking benefit of additional experience due to working in the respondent department which is special dispensation for persons who have worked in the respondent department. In this view of the matter, the applicants have to be considered for vacancies in their own category and cannot slip into the general category on the basis of additional marks for this weightage regarding experience. **Hence this OA is rejected.** No costs.”

CWP No. 6204/2017 filed in the matter was dismissed as withdrawn.

6. The applicants No. 3, 4 & 5, Pipal Mohammad, Vijay Uniyal and Raghav Ram had filed OA No. 143, 154 and 177 of 2013 seeking consideration against 167 posts of MTS advertised by the respondents on the ratio of the Supreme Court judgement in **State of Karnataka and Ors. Vs. Uma Devi and Others Appeal (Civil) 3595-3612 of 1999** decided on 10.04.2006. Applicant also sought relaxation in age, qualification and marks to be provided for work experience. OA filed by the applicant was found to be devoid of merit and rejected. Applicants No. 3 to 5 also filed CWP which was dismissed by the High Court vide order dated 18.12.2015.

7. The respondents argue that once the applicants’ case has been decided on merit by the Tribunal and the High Court, the respondents are well within their rights to dispense with the services of

the applicants in the absence of sanctioned posts and the fact that no fund under head daily wage was available to pay the applicants.

8. We have heard the learned counsel for the parties and perused the written submissions made.

9. Applicants are seeking grant of temporary status/regularization on the basis of DoP&T OM dated 10.09.1993. This OM was applicable only to those casual labourers who were in employment on the date of issue of the OM and had rendered 240 days of service in a year. The applicants in this OA are persons who have been engaged in subsequent years 1996, 2006, 2003, 2007 and 2012. Hence, the grant of temporary status on the basis of 1993 OM, which was a onetime dispensation and not an ongoing scheme, is not applicable as none of the applicants were in employment on the date of coming into force of the dispensation.

10. Applicants are placing reliance on the judgement passed in OA No. 163/2013 titled Mewa Singh Vs. CAG decided on 06.03.2017. This case is distinguishable from the case of the applicants in this OA as Mewa Singh was working with the respondent department since July, 1988, and also had completed one year of service when the DoP&T OM dated 10.09.1993 came into force. Applicants on the contrary were not in service in 1993 when the one time scheme came into effect. Hence, the comparison of applicants to Mewa Singh is misplaced.

11. The respondents, during arguments, also submitted that despite the dismissal of the OA by the Tribunal, they continued to accommodate the applicants on casual daily basis by seeking funds from

the Headquarter office. However, vide communication dated 17.03.2017 produced as Annexure A-19, the first respondent sought details of engagement of daily wagers. The Headquarter office directed the third respondent to outsource the activities performed by such daily wagers after seeking administrative approval of the Head Office. Such a proposal sent in April, 2017 was not agreed and the funds for engaging such persons were also stopped by the Headquarter Office. The respondents, therefore, argue that they do not have any budget or funds for making payment of wages to the applicants and their not being engaged was a consequence of this development. This contention was noted and was also the basis on which the interim order was vacated.

12. There is no doubt as per applicants' own admission that they are engaged on various dates beyond the 1993 order of regularization, which was a onetime scheme.

13. Applicants argue that 28 posts in the MTS cadre are lying vacant and the applicants could be adjusted against these posts. However, this matter was already considered in various OAs filed by the applicants cited in pre-paras and the prayer was not allowed. Hence, repeating the same is hit by principle of res judicata.

14. The respondents do admit that seven persons have been engaged through an outsourcing agency/contractor since March, 2017. This would have been in the light of the 6th CPC recommendations that the Government is required to outsource certain activities which would also provide employment in the form of contract labour, but without the outflow of funds for attendant benefits from the Government. This

outsourcing according to the respondents will be discontinued when regular incumbent joins and such persons have been working with respondents prior to dispensing of the services of the applicants.

15. The applicants have been before the Tribunal to get the benefit of regularization by adopting a different terminology in the prayer in earlier OAs filed. They have missed the bus for grant of temporary status as they were engaged after the onetime scheme was closed. After the 6th CPC, emphasis on the engagement of staff on daily wages is not encouraged. The VI CPC recommended outsourcing. This was also necessary in order to reduce the tendency in Government departments to engage persons for routine work on daily wage basis, a practice which is best frowned at as this gives unnecessary hope to the engagees to expect regularization. The respondent department appears to be one such office of the Government of India which has gone for large scale engagement of daily wagers instead of filling up vacant posts.

16. The respondents clarify the situation by saying that persons like the applicant No. 1 are not engaged on regular basis, but have been working intermittently on daily wage basis as per need and requirement. Respondents draw our attention to Annexures A-1, A-2, A-3, A-4 and A-5 produced by applicants wherein they have never completed 240 days in any year. The nature of duty of the applicants was not one as detailed for a sanctioned post. Annexures A-1 to A-5 produced in respect of applicants Bhag Singh, Ajay Kumar, Pipal Mohammad, Vijay Uniyal and Raghav Ram clearly show that in one year they have worked for various days varying from 46 to 206 days, and in most years, the number was

less than 200. None of the above four applicants have completed 240 days in any year and this is also the status of Bhag Singh who has been working for the longest period from 1996 to 2011 for 16 years.

17. In the absence of a budget under the Head "Wages" we cannot even direct the respondents to engage the applicants as such an order would not be honoured on account of lack of budget or the applicants will be working gratis for the respondents, a situation to be best avoided.

18. For the foregoing detailed discussion, relevant policies on the subject and on the principle of res judicata, this OA, being devoid of merit, is dismissed. No costs.



**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:
ND*