

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

C.P. NO.135/2004

in

O.A. NO.308/2003

This the 10th day of September, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Rajvir Singh,
Ex-Casual Labour,
C/O "R" Block, R-10/C,
Old Uttam Nagar,
New Delhi-110059.

... Applicant

(By Shri E. J. Verghese, Advocate)

-versus-

1. Shri Somy Tandon,
Controller General of Defence Accounts,
West Block-V, R.K. Puram,
New Delhi-110066.

2. Shri Nand Kishore,
Controller of Defence Accounts (R&D),
"L" Block,
New Delhi-110011.

... Respondents

(By Shri Mohar Singh, Advocate)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

OA No.308/2003 was disposed of vide order dated

14.11.2003 with the following observations/directions :

"3. From the perusal of the order passed on representation by the respondents dated 12.11.2002 it transpired that the claim of the applicant has been considered mainly on the basis of OM dated 10.09.1993 and there is no application of mind to the

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earlier instructions as referred to above *ibid*. In the result, OA is partly allowed. Impugned order is quashed and set aside. Respondents are directed to consider the claim of the applicant for regularisation in accordance with rules and instructions and in the light of DOP&T OM dated 7.6.1988 and pass a detailed and speaking order within three months from the date of receipt of a copy of this order. No costs."

2. The learned counsel of applicant stated that although the respondents have passed an order dated 25.2.2004 purportedly in compliance of Tribunal's directions in the aforesaid order, respondents have not considered applicant's claim for regularisation of his services in terms of DOP&T OM dated 7.6.1988. They have again rejected the applicant's claim on the basis of DOP&T OM dated 10.9.1993. He mentioned that though respondents have mentioned OM dated 7.6.1988 in their order dated 25.2.2004, actually respondents have rejected applicant's claim without taking into consideration the criteria prescribed for eligibility in OM dated 7.6.1988. He drew our attention to Annexure A-4 dated 24.6.2002 to the OA whereby respondents had requisitioned names of candidates for filling up four posts of casual labourers. He further referred to the following documents :

- "1) Annexure A-7 indicating that against total authorized strength in CDA(R&D) as on 31.5.2002, only 17 incumbents in Group 'D', 8 were in position.
- 2) Annexure A-9 dated 27.9.2002 relating to engagement of Casual Labourers renewal sanction by Hqrs, office where it was clarified that such Casual Labourers who have been engaged for more than two years from the date of issue of sanction/renewal sanction by the Hqrs. should be continued.

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- 3) Annexure R-1 (colly) in the C.P. stating that approval was conveyed for filling up three Group 'D' posts in CDA (R&D), New Delhi."

The learned counsel stated that while respondents continued action to fill up Group 'D' vacancies, applicants were not considered for regularisation in terms of Tribunal's orders. The learned counsel stated that respondents have not considered applicant's claim for regularisation on the ground that no vacancies exist, but respondents have continued the process of filling up regular vacancies in Group 'D'. Respondents have discontinued the process of filling up vacancies by fresh employees only in view of the present proceedings. The learned counsel also stated that respondents' plea that they cannot regularise the services of applicant in view of the ban on filling up vacancies is misplaced as ban is not applicable to regularisation of the eligible casual employees against regular Group 'D' vacancies. In this behalf, he relied upon the following :

- (1) 2002 (1) ATJ 466 : **Jokhan Prasad and Ors. v. Union of India and Ors.**; and
- (2) 2002 (2) ATJ 73 : **Nantu Ranjan Haldar v. Union of India and Ors.**

3. The learned counsel of respondents on the other hand stated that vide order dated 24.6.2002 respondents had asked the employment exchange to sponsor names of casual labourers on minimum rates and not for filling up regular posts of Group 'D' employees. However, as the Tribunal had directed vide order dated

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10.7.2002 in OA No.1728/2002 that services of the applicant would not be replaced by employing fresh casual labour in his place, the process for engagement of casual labour through employment exchange was discontinued. He further stated that applicant had never been engaged against a Group 'D' post. He had been engaged for seasonal work at the end of which, his services were terminated.

4. Guidelines for recruitment of casual labour as mentioned in the OM dated 7.6.1988 provide as follows :

- “(i) Persons on daily wages should not be recruited for work of regular nature.
- (ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
- (iii) The work presently being done by regular staff should be reassessed by the administrative departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- (iv) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional, regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.
- (v) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of Ministry of Finance.”

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From these guidelines it is clear that the department has to review its need for deployment of casual labour by reassessing work being done by casual workers and to see whether the same can be entrusted to the regular employees. The guidelines also provide that in case where it is not possible to entrust items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary with the concurrence of Ministry of Finance. Applicant had claimed in the OA that he had rendered a service of 957 days during a period of four years and six months, i.e., between 16.12.1988 and 23.8.2002 and as such had acquired a right to be considered for regularisation against clear vacancies of Group 'D' posts with respondent No.2. Although applicant has been working as a casual worker for a long time, obviously it has not been possible for the department to entrust the work being handled by the applicant to the existing regular employees. In such a situation in the light of the guidelines dated 7.6.1988 respondents were required to create additional regular posts so that the need to continue such casual workers was obviated. Apparently, the respondents have not taken any steps in this direction. The case of **Jokhan Prasad** (supra) is a similar case which was decided with the following directions to the respondents :

“13. We, therefore, allow these OAs and direct the respondents to consider the cases of the applicants for regularisation on Group-D posts. The respondents shall review their requirements of Group-D staff in terms of the guidelines issued under O.M. dated 7.6.88 and create the requisite number of regular Group-D posts within a period of six months from the date of receipt of a certified copy of this order.

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After creation of the posts, the applicants shall be considered for regularisation within a period of three months thereafter, in the light of the provisions of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993", and the observations made above."

5. Not only that applicant's case is covered by the ruling in the case of **Jokhan Prasad** (supra), the decision of **Nantu Ranjan Haldar** (supra) is also applicable to the facts of this case inasmuch as it was held therein on the basis of order dated 1.5.2000 in the case of **Dilip Kumar Das & Ors. v. Union of India & Ors.** (OA No.1071/1993) that for regularisation the plea of ban could not be raised and it could be done even without a vacancy.

6. In our considered view, respondents have rejected the claim of applicant vide order dated 25.2.2004 merely by mentioning OM dated 7.6.1988 rather than considering his claim in the light of the letter and spirit of OM dated 7.6.1988. They have also not followed the Ministry of Finance (Department of Expenditure) OM dated 23.10.2000 relating to review and filling up of vacant posts. While engagement of the applicant had continued over a period of four and a half years, no action as contemplated vide OM dated 23.10.2000 seems to have been taken by the respondents.

7. In the facts of the present case and no tangible action having been taken by the respondents either in the light of OM dated 23.10.2000 or in compliance of directions of this Court contained in order dated 14.11.2003, while a strict view for deliberate non-compliance of the directions of this Court could have been taken, resorting to a lenient view in the matter, an opportunity is hereby

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accorded to the respondents to obtain concurrence of Ministry of Finance (Department of Expenditure) for filling up one Group 'D' post by considering the claims of applicant. The entire action in compliance of these directions should be completed expeditiously but preferably within a period of two months from the date of communication of these orders failing which a serious view would be taken.

8. With the above observations and directions, this contempt petition is disposed of and notices discharged.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

10.9.04