

Central Administrative Tribunal
Principal Bench

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O.A.No.1595/2003 •
with
O.A.No.1488/2003
O.A.No.1639/2003.

Hon'ble Shri Shanker Raiu. Member (J)

New Delhi. this the 19th day of September, 2003

O.A.No.1595/2003:

Shri Manoi Tiwari
s/o late Shri G.S.Tiwari
r/o RZA 150. Dabri Extension
New Delhi - 110 045.
working as Peon (daily wades)
under Ministry of Non Conventional
Energy Sources
Govt. of India.

Applicant

(By Sh. R.N.Sinah, Advocate)

Vs.

1. Union of India
Ministry of Non-Conventional Energy Sources
Block No.14
CGO Complex. Lodhi Road
New Delhi - 110 012.
(through the Secretary).
2. The Under Secretary (Admn-II)
Ministry of Non-Conventional Energy Sources
Block No.14. CGO Complex
Lodhi Road
New Delhi - 110 012. Respondents

(By Advocate: Sh. D.S.Mahendru)

with

O.A.No.1488/2003:

Shri Shailendra Kumar Singh
s/o Sh. Shri Bhagwan Singh
r/o RZ-A50. Dabri Extension
New Delhi - 110 045.
working as Peon (daily wades)
under Ministry of Non Conventional
Energy Sources
Govt. of India.

Applicant

(By Shri R.N.Sinah, Advocate)

versus

1. Union of India
Ministry of Non-Conventional Energy Sources
Block No.14
CGO Complex. Lodhi Road
New Delhi - 110 012.
(through the Secretary).

2. The Under Secretary (Admn-II)
Ministry of Non-conventional Energy Sources
Lodhi Road.
New Delhi - 110 012.

... Respondents

(By Shri D.S.Mahendru, Advocate)

O.A.No.1639/2003:

Shri Ashwani Kumar
s/o Shri Iqbal Chand
r/o L-38, Shakur Pur
New Delhi.
working as Peon (daily wages)
under Ministry of Non Conventional
Energy Sources
Govt. of India.

... Applicant

(By Shri R.N.Singh, Advocate)

versus

1. Union of India
Ministry of Non-Conventional Energy Sources
Block No.14
CGO Complex, Lodhi Road
New Delhi - 110 012.
(through the Secretary).

2. The Under Secretary (Admn-II)
Ministry of Non-Conventional Energy Sources
Block No.14, CGO Complex
Lodhi Road
New Delhi - 110 012. ... Respondents

(By Shri D.S.Mahendru, Advocate)

O R D E R (Oral)

By Shri Shanker Raiu, Member (J):

As these OAs include identical questions of facts and law, the same are being disposed of by this common order.

2. In OA 1488/2003, applicant was initially engaged on being sponsored through Employment Exchange, on casual basis on daily wages and was entrusted the work of a Peon.

3. In OA 1595/2003 applicant, on being sponsored through Employment Exchange, was initially engaged on casual basis on daily wages w.e.f. 1.4.1997 and discharged his duties as Peon.

4. In OA 1639/2003, applicant was engaged on daily wages in September, 1995 and had performed the duties of a Peon.

5. In all these cases, the applicants had worked from their engagement as daily wagers attached to the Minister of State for Non-conventional Energy Sources. Their services were dispensed with but they continued to perform their duties as alleged through a Contractor M/s. Helpline Hospitality w.e.f. 1.2.2003. Being aggrieved with non-payment of wages and seeking regularisation with all consequential benefits. OAs have been filed.

6. Drawing my attention to various documents annexed, learned counsel for the applicants Shri R.N. Singh contends that though the applicants had performed the duties of a Peon, which is of a permanent and perennial nature, till February, 2003, their services have been dispensed with which act of the respondents is violative of Articles 14, 16 and 39D of the Constitution of India. Referring to the DOP&T Scheme dated 7.6.1988 and the decision of the Apex Court in State of Haryana vs. Piara Singh, 1992 (4) SCC 118, it is contended that if a casual labour

is continued fairly for a long spell i.e. 2-3 years. a presumption arise for regular need of his services and in that event it is obligatory upon the authorities to examine the feasibility for his regularisation. Further relving upon the decision of Apex Court in **Surinder Singh vs. Engineer in Chief, CPWD.** 1986(1) SCC 639 . it is contended that the applicants are entitled for regularisation.

7. In so far as the issue regarding their having engaged by a Contractor is concerned. internal notings issued by the Additional Private Secretary to the Minister of State have been produced which showed that the applicants had worked on daily wages as Peon and were reimbursed the travelling/conveyance charges and certificates in respect of their working have also been issued. Further relving upon competent authority's order i.e. Additional P.S. to Minister granting Over Time Allowance to the applicants. it is contended that the same has been ordered beyond March, 2003 and the contention that M/s. Helpline Hospitality has engaged the applicants is belied on the face of it. It is further stated that the applicants whenever they were sent. had entered the communication sent in the Peon Book which fact is not admissible for a contract employee. It is also stated that the applicants have been issued passes not only for the Ministry of Non-Conventional Energy Sources but during the Lok Sabha in session and as well certificates were issued from the Ministry concerned

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certifying their working period. Accordingly it is stated that the contract has not been established by producing any documents and mere payment by M/s. Helpline Hospitality is a guise and a camouflage. In fact the applicants had been working under the control and directions of concerned officers in the Ministry and are part of it.

8. Learned counsel states that respondents had stopped wages but on direction of this Tribunal the payments have been made but by virtue of their rendering services in the past for two consecutive years for 240 days and after being sponsored through Employment Exchange, Scheme of DOP&T OM dated 7.6.1986 which is yet to be declared one time measure is in vogue and is to be invoked for their regularisation.

9. Respondents vehemently opposed the contentions put forth by the learned counsel for the applicants. Learned counsel for the respondents Shri D.S. Mahendru states that the applicants have worked only as a daily wagers and in absence of any vacancy of Peon in the Ministry and having regard to preferential claim of surplus staff, the applicants are not entitled for accord of temporary status or regularisation. He denies that the applicants have been sponsored through Employment Exchange as the wages of daily wagers are governed under Minimum Wages Act and the applicants were paid the same for the work performed by them. Since the work had ceased to



exist. the services of the applicants were dispensed with.

10. Shri Mahendru states that from 1.2.2003 on a requisition to M/s. Helpline Hospitality by UNDP Project under Ministry of NonConventional Energy Sources, the applicants have been engaged by the Contractor to provide some services to UNDP funded Project being temporarily housed in the division of the Ministry. As such, as payment was not made by the Contractor, Dr. Parveen Saxena, Director was contacted and ultimately the payment has been made to the applicants for the period they had worked under M/s. Helpline Hospitality through receipts duly signed by them. He also produced the cheques issued from M/s. Helpline Hospitality as well as an affidavit stating that the applicants were engaged by the Contractor.

11. In so far as Identity Cards and passes issued to the applicants is concerned, it is stated that though they had worked on daily wages, Identity Cards have been issued to them to enter in the Ministry, which is under high security zone.

12. As regards O.T.A., it is stated that though a statement was made, the authority concerned has not disbursed the same to the applicants.

13. Lastly, it is stated that the internal notings from APS to the Minister, cannot be relied upon in a judicial proceedings to substantiate the claim of the applicants in view of the decision of the Apex Court in **UP State Development Corporation vs. Amar Singh**, 2003(5) SCC 388.

14. In the reioinder applicants reiterated the pleas taken in their OAs and stated that in case the casual workers are denied engagement/regularisation, onus of proof lies on the employer as held by this Tribunal in the case of **G.Krishnamurthy Vs. Union of India & Others**, 1989 (9) ATC 158.

15. Learned counsel Shri Singh relies upon the decision rendered by this Tribunal in OA No. 19/2003 in **Sripal vs. UOI & Ors.** decided on 3.7.2003 where claim for regularisation has been disposed of in view of DOP&T Scheme dated 7.6.1988 and states that the case of the applicants, in all fours, is covered by the aforesaid ratio.

16. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as working of the applicants beyond 1.2.2003 is concerned, I find that the respondents by their letter dated 22.01.2003 issued by Dr. Parveen Saxena, Director sent a requisition to M/s. Helpline Hospitality for providing manpower i.e. casual employees on temporary basis for a UNDP funded Project

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under the Ministry. In response to above, M/s. Helpline Hospitality through its proprietor provided the services of the applicants in UNDP funded Project. Hence, the wages to the applicants after 1.2.2003 had been paid by M/s. Helpline Hospitality and in proof of which the acknowledgement in the form of receipts as well as cheques drawn and disbursed to the applicants have been shown to me which clearly reveal that the payments for their working had been borne by M/s. Helpline Hospitality. In this view of the matter, beyond 1.2.2003, the applicants have been working on contract basis under a contractor and are not in direct employment of the respondents as a daily wagger on casual basis.

17. The fact regarding the certificates issued by the APS to the Minister as well as the work performed and entries in the Peon Book is concerned, as a hospitality industries one of the works of contract labour is to provide services of delivering communication and in that event an entry to maintain record has been made. Merely because the passes have been issued which are for the reason that the Ministry is a high security zone would not bestow a status of casual worker on daily wages upon the applicants. They remained on contract employment beyond 1.2.2003. As such the aforesaid period cannot be enforced to be reckoned for the purposes of regularization. Moreover, this court has no jurisdiction to deal with the issue of contract labour in view of the Apex Court

decision in **National Water Front Union vs. Steel Authority of India**, 2001(7) SCC 1. I am also satisfied that the applicants have been paid by the Contractor i.e. M/s. Helpline Hospitality and not through the Consolidated Fund of India. As such the status of the applicants beyond 1.2.2003 is of a worker under a contractor.

18. As regards working of the applicants beyond 1997 till 2003 is concerned, there is ample evidence to establish that the applicants had worked under the direct control of the respondents as daily wagers performing the work of Peon. The Apex Court in **V.M. Chandra vs. UOI**, 1999(4)SCC 62 has held that casual labour can be engaged as a Peon and can have a designation. However, as regards wages equal to the regular employee cannot be claimed unless regularisation is made as for 'equal pay for equal work', all functional requirements are to be identical.

19. As regards the contention put forth by the applicants referring to the internal notings of APS to the Minister is concerned, these notings cannot be used to establish a right in a judicial proceedings as held by the Apex Court in **Amer Singh's case** (supra).

20. However, as regards the claim of regularisation on the strength of having worked upto 2003 is concerned, I find that in case of a casual

worker, respondents having onus to prove to the contrary, the contention of the applicants of having worked on casual basis, have in fact miserably failed to discharge the same. It is proved on record beyond doubt that the applicants had worked on casual basis performing perennial job of Peon since their engagement. In **Surinder Singh & Anr.** (Supra) where the casual workers on daily wages in CPWD had claimed for regularisation, directions have been issued to the Govt. to take appropriate action to regularise their services.

21. Prior to the aforesaid decision, the DOP&T guidelines contained in DOP&T OM dated 26.10.1984 provides appointment of casual labour to group-D posts borne on regular establishment subject to sponsorship through registration with Employment Exchange and working for two consecutive years for 240 days.

22. After the decision of Apex Court, the general terms & conditions have been laid down through OM dated 7.6.1988 which is reproduced as under:

"I. General Terms and Conditions for employment of casual labour.

1. The policy regarding engagement of casual workers in Central Government Offices has been reviewed by Government keeping in view the judgement of the Supreme Court delivered on the 17th January, 1986, in the Writ Petition filed by Shri Surinder Singh and others v. Union of India and it has been decided to lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis:-

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) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
- v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the State Government/Union Territory Administration, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.
- vi) The casual workers may be given one paid weekly off after six days continuous work.
- vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned at (iv) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.
- viii) 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.

ix) Where work of more than one type is to be performed through out 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 the Ministry of Finance.

x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age-limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age-limit for the relevant post.

xii) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

2. All the Administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved:-

(a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

(b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.

(c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

3. By strict and meticulous observance of the guidelines by all Ministries/Departments, it should be ensured that there is no more engagement of casual workers for attending to work of a regular

nature, particularly after the review envisaged above is duly completed. Each Head of Office should also nominate an officer who would scrutinize the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not.

4. Ministry of Finance, etc., are requested to bring the contents of this OM to the notice of all the appointing authorities under their respective administrative control for strict observance. Cases of negligence in the matter of implementing these guidelines should be viewed very seriously and brought to the notice of the appropriate authorities for taking prompt and suitable action against the defaulters."

23. The Tribunal in a decision dated 16.2.1998 in Rai Kumar vs. UOI directed framing of Scheme for regularisation for casual employees thereupon the following guidelines have been laid down which ultimately resulted in formulation of a Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993 commonly used as DOP&T Scheme of 1993:

"7. Scheme for Grant of Temporary Status and Regularization of Casual Workers.

The guidelines in the matter of recruitment of persons on daily wage basis in Central Government offices were issued vide this Department's OM No. 49014/2/86-Estt(C), dated 7.6.1988 [See Orders under (1) above]. The policy has further been reviewed in the light of the judgement of the CAT, Principal Bench, New Delhi, delivered on 16-2-1990, in the Writ Petition filed by Shri Rai Kamal & Others vs. Union of India and it has been decided that while the existing guidelines contained in OM, dated 7.6.1988, may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by the Scheme as appended.

2. Ministry of Finance etc., are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in OM, dated 7.6.1988. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action".

24. Clause 10 of the aforesaid Scheme provides that in future the guidelines contained in OM dated 7.6.1988 should be followed strictly in the matter of engagement of casual employee in Central Government offices.

25. The Apex Court while deliberating upon the DOP&T Scheme of 1993, in **UOI vs. Mohan Pal**, 2002 (4) SCALE 216, has held the said Scheme to be one time measures and those who were working on casual basic and were in engagement on 1.9.1993 having completed 240/206 days were accorded temporary status.

26. On a cumulative reading of the aforesaid provisions, I am of the view that for appointment of casual labourers and their absorption to regular group-D posts, the guidelines of 26.10.1984 provided eligibility of registration with employment exchange and completion of 240 days in two consecutive years. In 1988 guidelines in clause 10, regularisation in pursuance to directions of the Apex Court was subjected to the instructions issued by the department at the relevant time. In 1988 the only instructions which were in vogue were the guidelines issued on 26.10.1984.

27. DOP&T Scheme of 1993 held to be one time measure was with a view to accord temporary status to those casual labourers who had fulfilled the eligibility criteria and were in engagement on 1.9.1993. The same has been made applicable to them but the casual labourers who had earlier fulfilled the eligibility criteria but not in engagement on 1.9.1993 as well as others who had been engaged and completed the eligibility after 1.9.1993 are still to be governed by the guidelines issued on 26.10.1984 as well as 7.6.1988. This is on the strength that the aforesaid guidelines are still in vogue and are not superseded by the Government. These guidelines are also not subject matter of scrutiny by the Apex Court and are also not held to be one time measure. The aforesaid contention gain strength in view of the clause 10 of the DOP&T Scheme of 1993 which on its one time measure was restricted to those casual labourers who were in engagement on 1.9.1993 but thereafter the guidelines which are to be followed are referred to in OM dated 7.6.1988.

28. In my considered view the guidelines of 7.6.1988 are to be applicable to those casual labourers who irrespective of cut off date of 1.9.1993 had completed 240 days itself in two consecutive years on being registered with the employment exchange and confirming to the eligibility criteria laid down.

29. Keeping in view the above and applying the same to the facts and circumstances of the present cases. I find that the applicants had worked since 1997 and 1999 on a perinnial job of group-D and have completed requisite working days and were registered with employment exchange. in that event they are to be considered for regularisation as per the guidelines of 7.6.1988 as well as 26.10.1984.

30. In the result, for the foregoing reasons, the OAs are partly allowed. Respondents are directed to consider the claim of the applicants for regularisation under the guidelines of 26.10.1984 as well as 7.6.1988 in accordance with rules and instructions and subject to applicants fulfilling the eligibility criteria. A copy of this order be kept in each of the file of the OAs. No costs.

S. Raju
(Shanker Raju)
Member (J)

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