CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2083/2003
MA 1767/2003
MA 2633/2003
MA 709/2005

New Delhi, this the 15th day of September, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

1. Inderpal Singh
S/o Shri Bhanwar Singh,
R/o Village & Post Office Dabka,
P.O. Kankarkhera, District
Meerut (U.P.).

2. Vinod Kumar,
S/o Shri Brij Mal,
R/o Village Lalsana
P.O. Rajpura,
Meerut Cantt., Meerut, (U.P.). ...Applicants.

(By Advocate Shri S.K. Gupta)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Deputy Director General,
Military Farms,
Quartermaster General's Branch,
Army Headquarters,
West Block-III, R.K. Puram,
New Delhi. .....Respondnets.

(By Advocate Shri Yash Pal for Shri A.K. Bhardwaj)

O R D E R (ORAL)

When the matter was called up in the first call, Shri Rakesh Chahar, proxy counsel appearing on behalf of Shri A.K. Bhardwaj, counsel for respondents sought adjournment on latter's personal ground. Vide order dated 02.8.2005, Vice-Chairman (J) noted that no further adjournment will be granted in this case being the old matter. Therefore, such request was rejected and the matter was

passed over. In the second call, Shri Yash Pal appeared as proxy counsel for respondents.

2. Two applicants in the present OA seek quashing of identical order of termination, which is referred as "retrenchment order" dated 19.6.2003. They also seek direction to respondents to treat them as continuing in the post concerned as if no such above order had been passed and also to pay them difference of pay and arrears from 19.6.2003 till the date of payment with all consequential benefits.

3. The facts are that due to alleged reduction of PE/Work, applicants' services were terminated w.e.f. 20.6.2003. One month salary in lieu of notice and compensation @ 15 days salary at current rate for each completed year with 240 days attendance, was enclosed thereto. Simultaneously, the applicants were directed "to keep in touch with this farm regularly as and when any type of work on job basis", the same would be given work to them as per seniority. It is contended by Shri S.K. Gupta, learned counsel appearing on behalf of applicants that though the aforesaid termination/ retrenchment order recites that there was reduction of work, but it was camouflage and specious plea in as much as on an earlier occasion since the applicants were apprehending termination, the first applicant approached this Tribunal vide OA No.1425/2003. The said OA was contested by respondents by filing a reply affidavit dated 13.6.2003 stating in clear terms that the respondents had not dis-engaged the services of the applicant orally, as alleged. In view of this, the aforesaid OA 1425/2003 was declared to be based on no cause of action and accordingly dismissed as infructuous vide order dated 17.6.2003 (Annexure A-4). When the ink of the said order had not even been dried up, the respondents terminated their services on 19.6.2003.

4. It is specifically contended, with reference to para 4.2 of the OA, that the applicants though were granted temporary status in terms of earlier OAs filed and directions issued by this Tribunal on 19.12.1999 as well as 18.2.2000 but no formal order was supplied to them. Rather they were showed the order of the said status. With reference to paragraph 4.5, it was further contended that after receiving aforesaid order dated 19.6.2003, applicants approached the respondents for their re-engagement and as the sufficient work was available, the applicants "were again taken on job basis and the applicants are still working and to a great surprise the applicants were not paid on the basis previously." In para 4.5 and 4.6 the applicants alleged that as the sufficient work was available with the respondents, they were again taken on job basis and are still working.

5. It is further contended that prior to the said order dated 19.6.2003, the applicants were being paid @ Rs.156/- per day, which rate has been reduced to Rs.80/- per day from 21.6.2003 onwards. The plea of reduction of work, as projected by the respondents is baseless, arbitrary and camouflage in nature, particularly when no reply had been offered. The impugned order dated 19.6.2003 was passed with a view to take away the rights and privileges of the applicants, as casual worker with temporary status. When there was reduction of permanent staff, then how the applicants could be engaged, which is termed as "job basis", contended learned counsel. The said contentions remain undisputed, uncontroverted and not answered, further contended learned counsel for the applicants.

6. Respondents, on the other hand, contended that the identical matters as of the present order dated 19.6.2003 were challenged before the High Court of Karnataka in Writ Petition Nos. 968, 1295 to 1306 of 1999 and the same were dismissed vide common order dated 18.6.1999. Some similarly placed officials also approached this Tribunal vide OA No.1267/1999, 1263/1999 and

1265/1999, which too were dismissed by this Tribunal on 05.07.2000. The plea of the respondents that there had been a reduction of work was accepted by the High Court/ Tribunal in the afore-noted cases, contended the respondents.

7. I have heard learned counsel for the parties and perused the pleadings. The short question, which needs consideration in the present case is whether the respondents were justified to on the one hand in retrenching the applicants and on the other hand immediately employing them on the very next date on job basis.

8. I have carefully perused the orders passed by the High Court of Karnataka as well as by this Tribunal in the afore-mentioned cases and find that the facts of those cases were totally different than the facts in the present case in as much as neither the applicants/ petitioners were informed a day before that there was no threat of termination nor they were engaged immediately on the very next day of retrenchment/ termination. The applicants in OA, particularly para 4.2 stated that no formal order granting temporary status was conveyed to them, though it was shown. The respondents denied such contentions and stated that applicants were given temporary status in terms of the scheme notified by the Government of India DOP&T OM dated 10.09.1993, and the letter to the said effect had been dispatched to them by registered post as stated in reply para 4.2, which reads as follows:-

> *"4.2 That the contents of para 4.2 of the OA are again wrong, incorrect and misleading hence the same are denied. It is respectfully submitted that the proper letter dated 28th May 2000 and 4th April 2000 for conferring Ty status upon the applicant were sent to him by Registered Post at the following address mentioned in the OA:-"(emphasis supplied).*

9. As such it is established that the applicants were granted Temporary Status and therefore their engagement etc. were governed by the provisions of DOP&T OM dated 10.9.1993, issued on the said subject. Clause 7 of the

aforesaid scheme provides that despite grant of such temporary status, their services could be dispensed with by issuing one month notice in writing as if they were regular casual labourers. In U.O.I. vs. Mohan Pal & Ors. {2002 (2) ATJ 215 (SC)], the Hon'ble Supreme Court held that :

> *"Having regard to the general scheme of 1993, we are also of the view that the casual labourer who acquire 'temporary status' cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still employed by the employer for carrying out the work, the casual labourers who have acquired 'temporary status' shall not be removed from service as per clause 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the service of a casual labourer who had acquired 'temporary status."*

The aforesaid law, in my considered view, squarely apply to the present case.

10. In the above backdrop, I am unable to comprehend as to how learned counsel for respondent contended that the respondents did not accord temporary status to the applicants particularly with reference to the stand taken by them in their specific reply, relevant portion of which is extracted hereinabove. It is unfortunate that the members of the Bar sometimes interdict and interrupt the Bench, when the orders are being dictated, as sought to be done in the present case. I may note that learned counsel for respondents in the present case had not been appearing and, in fact, had appeared through proxy counsel. He appeared only on seven dates of hearing out of thirty-two hearings. Most of the times, the order-sheets show, that it was proxy counsel who had been appearing and conducting the case for the respondents.

11. The question for consideration remains whether the applicants retrenchment order 19.6.2003 is justified, particularly when they had already been conferred temporary status in terms of the direction given in the year 2000 itself and were taken back on duty under the cover of job basis on the very next date.

The further issue that needs consideration is whether the respondents' plea that there had been reduction in worth, is tenable and justified.

12. After hearing the counsel for the parties and on perusal of the pleadings as well as on bestowing my careful consideration to the same, I am of the considered opinion that the stand taken by the respondents, in fact, is an attempt to mislead the Bench. The contention, as noticed hereinabove, raised that the applicants were retrenched due to reduction of work is nothing but camouflage, besides a specious plea, besides. It is not denied by the respondents that the applicants have been working since 21.6.2003 and are being paid at a lesser rate than the rates for which they were entitled to after acquiring temporary status. It also remains unexplained that if there was in fact reduction in work, then how and why the applicants were engaged on the very next day of their retrenchment.

13. A perusal of the Scheme on the said subject would show that conferment of temporary status has no reference either with the creation or availability of regular Group-D post. There remains no change in his duties and responsibilities. Further more the engagement "will be on daily rates of pay on need basis." The casual labourer with temporary status can be deployed anywhere within the recruitment unit / territorial circle on the basis of availability of work. One such status is conferred, the casual worker becomes entitled to certain benefits as enumerated under para 5 of the said Scheme namely minimum of the pay scale, increments, leave entitlement on pro rate basis etc. etc. In other words, it is not necessary that the casual labourer with temporary status should be engaged irrespective of "need" of the concerned organization. It is a well-settled law that when a person is terminated / retrenched in the manner in which the applicants have been terminated, it is well within the competence and jurisdiction of the Court / Tribunal to lift the veil and see the actual and factual position. In the present case I need not to lift the veil, for the reason that

the respondents themselves have admitted in clear terms that applicants continued to remain employed since 21.6.2003. In other words, as on day they continue to remain employed with them. It is neither the object of this order nor it is the purport of the Scheme that a casual labourer with temporary status cannot be terminated or he can't quit the services. When the work was available with the respondents and the applicants were engaged on need basis, why they were terminated or retrenched, is a question, which remains unanswered. Had applicants been not terminated / retrenched, they would have been paid the wages with reference to the minimum of the pay scale as they had been conferred such status. Without altering / modifying the said status, the applicants were terminated and they were engaged immediately thereafter on daily wages, at the rate much lower than to which they were entitled to, if no such termination order / retrenchment order had been passed. In other words, the applicants have been exploited for no just and valid reasons.

14. I would like to observe that if for some reason, the respondents fail to attend or controvert a certain point raised in the pleadings, the same could always be clarified or overcome by filing additional affidavit or placing such material on record, as it is felt necessary. The perusal of the reply filed by the respondents specifically shows that there is no rebuttal made to the contentions raised in para 4.5 and 4.6, contents of which have been noticed hereinabove. The contention raised in the said paras is the moot point in the present OA. As the applicants were employed on the very next day of their termination / retrenchment, conclusion is inescapable that there existed the work against which the applicants were employed, and as they continue to remain employed for almost two years since then, the need to attend the said work exists as on date too. I have already observed that the judgments relied upon by the respondents are inapplicable to the facts of the present case. In view of the above, there remains no justification for termination of applicants' services.

15. In view of the above, I have no hesitation to conclude that the applicants have been treated arbitrarily, illegally and unjustly by the respondents and the termination order dated 19.6.2003 is a camouflage and is liable to quashed and set aside with all consequential benefits. Accordingly, OA is allowed. Since I have already dealt with OA, MAs being Nos 1767/2003, 2633/2003 and 709/2005 seeking summoning of records, placing certain documents on record is allowed. I may make it clear that even those records had been perused before I passed the aforesaid order. The respondents are directed to pay all consequential benefits within a period of two months from the date of receipt of a copy of this order. No costs.

(Mukesh Kumar Gupta)
Member (J)

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