

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.3097 OF 2003

New Delhi, this the 11th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Suresh Kumar  
S/o Shri Blkishan,  
R/o S-147/194, Khan Market,  
Humayun Road, New Delhi.
2. Kirshan Kumar Rajput,  
S/o Shri Satya Parkash,  
R/o Qr. No.226, Sector-4,  
R.K. Puram, New Delhi.
3. Gajinder Partap Pal,  
S/o Shri Raja Ram Pal,  
R/o 2184, Lodhi Road Complex,  
New Delhi.

.....Applicants

(By Advocate : Shri S.C. Sharma)

Versus

1. Union of India,  
Through Secretary,  
Ministry of Environment and Forest,  
Paryavaran Bhawan,  
C.G.O. Complex,  
Lodhi Road, New Delhi.
2. Joint Secretary,  
N.A.E.B.,  
Ministry of Environment and Forest,  
Paryavaran Bhawan,  
C.G.O. Complex,  
Lodhi Road, New Delhi.
3. Deputy Inspector General of Forest,  
Ministry of Environment and Forest,  
Paryavaran Bhawan,  
C.G.O. Complex,  
Lodhi Road, New Delhi.

.....Respondents

(By Advocate : Mrs. Avinash Kaur)

**ORDER (ORAL)**

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed seeking the following reliefs:-

- "(1) That the respondents - be restrained from terminating the services of the applicants and also be restrained from not to take any such action which could amount to termination of the services

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of the applicants, during the pendency of the O.A., in the interest of justice.

- (ii) Any other relief which this Hon'ble Tribunal fit and proper in the circumstances of the case, may also be granted in favour of the applicants and against the respondents."

2. It is claimed that all the three applicants were engaged on daily wage basis as follows:-

- |       |                      |             |
|-------|----------------------|-------------|
| (i)   | Suresh Kumar         | 04.05.1999  |
| (ii)  | Kirshan Kumar Rajput | 11.10.1999  |
| (iii) | Gajinder Partap Pal  | Sept., 2000 |

3. The claim of the applicants is that they have been working since 1999 and 2000. Therefore, the only logical conclusion is that the work allotted to the applicants is of permanent nature. The learned counsel further states that some more persons have been engaged on daily wages even after the engagement of the applicants. According to the learned counsel, applicants deserve to be regularised. He also stated that there are three regular vacancies in Group 'D' category. However, he fairly stated that there are more than three senior daily wagers with temporary status available with the respondents.

4. In support of his contention that the applicants deserve to be regularised, he placed reliance on the following decisions of the Hon'ble Delhi High Court:-

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(3)

1. Yogender Prasad and Another Vs. State of Manipur and Others, 2001 AD (DELHI) 491; and
2. Bhagwati Prasad Vs. Union of India, 2000 (52) DRJ 157.

5. The respondents have stated in their reply that there is no vacancy of Group 'D' post. It is also stated that the applicants were not sponsored by the Employment Exchange against the regular vacancy. Their age or educational qualification or reservation roster was also not considered. In other words, they were engaged without following the instructions on the subject. By way of illustration, it has been stated that the applicant No.1 has neither requisite educational qualification nor has been engaged through Employment Exchange. Learned counsel of the respondents stated that the applicants have been engaged as casual labourers on daily wage basis on considering the immediate need of the respondents. According to the learned counsel, the entire Original Application is misconceived as neither any junior has been regularised to Group 'D' post nor the applicants services have been terminated.

6. After hearing the learned counsel of the parties and after perusal of the materials available on record, it is held that reliefs claimed by the applicants cannot be allowed at this stage. The relief of regularisation of the applicants service can

*C. B. Singh*

be granted only in terms of the recruitment rules or instructions of the Government. Neither of the counsel have placed on record the recruitment rules.

It is not possible to verify whether the applicants fulfil the requisite qualification for being considered against Group 'D' post or not. As a matter of fact, no junior of the applicants has been regularised in Group 'D' post, as there are no vacancies as claimed by the respondents. If there are vacancies in future, the respondents are likely to follow their own guide-lines and rules on the subject. In case, the applicants are aggrieved by any future action of the respondents, they will be at liberty to agitate the same in due course. So far as reliance on the decisions of Hon'ble Delhi High Court are concerned, it may be stated that the decision in Yogender Prasad's case (supra) relates to reinstatement of LDC. The decision of Hon'ble Delhi High Court is also based on the facts of that case where it was contended that there were vacancies in the grade of LDC. It was on the peculiar facts of that case that the Hon'ble Delhi High Court has held that on the availability of two posts of LDCs, the petitioners in that case could have been considered for regular employment as LDCs in stead of terminating their services. So far as the decision in the case of Bhagwati Prasad (supra) is concerned, it is seen that the petitioner in that case was appointed in the year 1993. On the facts of that case, the Hon'ble Delhi High Court has held that the respondents cannot be allowed to treat the appointment of the petitioner

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co-terminus with the tenure of the office of the Chairman. It has further been held that impugned order of termination of the services of the petitioner "smacks of malafide". The direction of the Hon'ble Delhi High Court was to grant temporary status to the petitioner in that case and also to consider the petitioner's case for grant of regularisation of his services as Peon as and when vacancy of regular Peon became available. On the facts, as stated earlier, in this case, the decision of the Hon'ble Delhi High Court in this case of Bhagwati Prasad (supra) also does not apply. The Hon'ble Supreme Court in the case of State of M.P. and Another Vs. Dharam Bir, 98 (6) SCC 165 have held that nature of appointment does not change with long passage of time. If the applicants were appointed on daily wage basis, they will remain so unless they fulfil the qualifications prescribed in the recruitment rules.

7. In view of the observations made in the preceding paragraphs, this Original Application is disposed without any order as to costs.



(R.K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

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