

08.07.2021  
Item no.89

Aloke  
Ct. no.16

**(Through Video Conference)**

**WPCT 27 of 2020**

**Union of India & Ors.  
Versus  
Bimal Chandra Paul & Ors.**

Ms. Susmita Saha Dutta, Adv.

Mr. Niladri Saha, Adv.

... for the petitioners

The writ petition is arising out of an order passed by the Central Administrative Tribunal on October 11, 2018 in OA No.350/1180/2016 in connection with an application filed by seven applicants praying inter alia for regularizing their services with effect from the date of the temporary status from September, 1993 along with all consequential benefits. The appellants were appointed as Casual Labourers with temporary status. Earlier they approached the learned Tribunal for consideration of the case for regularization. The Tribunal in the earlier proceeding passed the following direction :

*“The Respondent No. 3 shall consider the case of the applicants in terms of the aforesaid judgment and number of days they served as well as availability of vacancies as on this date under suitable Group “D” category against which the applicants can be regularized, and shall pass appropriate reasoned and speaking order within three months from the date of communication of this Order. In case it is found that the said three/four incumbents already regularized, had lesser number*

*of days of engagement than the present applicants, the present applicants shall be deemed to be regularized w.e.f. the date the said juniors have been regularized, but with no financial benefits. They shall, however, be entitled to counting of the service for all purposes except the arrears of pay for which appropriate orders shall be passed by the competent authority within the said three months.”*

Pursuant to the said direction dated February 26, 2015 the said respondent considered the representation and declined to regularize the present petitioners. Although, after examining the inter se seniority of Shri Rajbir Singh, Suresh Chand and Daya Krishan who were regularized in the year 2005 vis-à-vis 15 applicants in the earlier original application being OA NO. 1156 of 2013.

The summary of the findings are that the matter of regularization of Casual Labourers (Temporary Status) who were under the active consideration of the Staff Selection Commission and the Department of Personnel & Training (DOPT) even before the decision of the Tribunal dated August 26, 2014 rendering in OA No. 1156 of 2013 and all Ministries/Departments of Government of India to forward a consolidated proposal for regularization of all such remaining Casual Labourers (Temporary Status) on its rolls of the Ministries/Departments on September 10, 1993 were yet to be regularized .

The Staff Selection Commission has on its roll 41 Casual Labourers (Temporary Status) in its Headquarters

as well as Regional and Sub-Regional offices, who were yet to be regularized. Their cases were also referred to the DOPT on November 26, 2014 and December 12, 2014 for consideration. The combined eligibility list of Casual Labourers (Temporary Status) were prepared on the basis of the seniority reckoned from the date of which the person completed at least 240 days (206 days in the offices observing 5 days a week) for at least two consecutive years in terms of DOPT's OM dated October 26, 1984. Therefore, the Commission decided that the seniority is to be determined from the date on which the eligibility condition for regularization were fulfilled as per the instructions contained in the DOPT's OM dated October 26, 1994.

The date of eligibility of Shir Rajbir Singh, Suresh Chand and Daya Kishan was shown as December 31, 1992 while that of the applicants in this OA were depicted as under :

*“Shri M. Sengupta (Applicant No. 12), S.K. Pal (Applicant No. 9), A.K. Roy (Applicant No. 2), S. Dey (Applicant No. 3), G. Chatterjee (Applicant No. 4), B. Paul (Applicant No. 1), N.C.Dey (Applicant No. 7), H.H. Ram (Applicant No. 8), A. Guha (Applicant No. 10), D. Dey (Applicant No. 11), Md. Akrom (Applicant No. 13) being 31.12.1995 whereas the date of eligibility of Shri S. Routh (Applicant No. 5) being 31.12.1996 and Krishna Majumdar (Applicant No. 14) being 31.12.1998, and R. Bhattacharyya (Applicant No. 6) and Pranab Dey (Applicant No. 15) being 31.12.2000.”*

The casual labourers who acquired eligibility in the same year, their names were placed in the order of their initial engagement as mentioned in the speaking order. Since the three seniors were regularized in the year 2005 and no junior was regularized thereafter the applicants were left out.

The aforesaid narration of facts would irrefutably demonstrate that the authority concerned was not inclined to grant any benefit to the applicants in OA No. 1156 of 2013.

A contempt petition being No. CPC.350/2/2015 (O.A. 1156/2013) was preferred thereafter. The Tribunal while considering the said matter was not satisfied with the comparative chart and during the pendency of the contempt proceeding on February 17, 2016, the Commission appointed 19 persons as under :

| S. No. | Name of the Casual Labourer (TS)/Region where | Region where appointed | Effective date of appointment |
|--------|-----------------------------------------------|------------------------|-------------------------------|
| 1.     | Salil De, SSC (ER)                            | SSC (ER)               | 07.09.2005                    |
| 2.     | S. Routh, SSC (ER)                            | SSC (ER)               | 07.09.2005                    |
| 3.     | N.C. Dey, SSC (ER)                            | SSC (CR)               | 07.09.2005                    |
| 4.     | A.K. Roy, SSC (ER)                            | SSC (HQ)               | 07.09.2005                    |
| 5.     | H.H. Ram, SSC (ER)                            | SSC (CR)               | 07.09.2005                    |
| 6.     | S.K. Paul, SSC (ER)                           | SSC (MPR)              | 07.09.2005                    |
| 7.     | D. Dey, SSC (ER)                              | SSC (HQ)               | Date of joining of the post   |
| 8.     | Chaman Lal, SSC (HQ)                          | SSC (HQ)               |                               |
| 9.     | Bhagat Singh, SSC (HQ)                        | SSC (HQ)               |                               |

|     |                                       |           |  |
|-----|---------------------------------------|-----------|--|
| 10. | Anil KUMar,<br>SSC (HQ)               | SSC (HQ)  |  |
| 11. | Sunder<br>Singh Rana,<br>SSC ((HQ)    | SSC (HQ)  |  |
| 12. | Vidya Nand,<br>SSC (HQ)               | SSC (HQ)  |  |
| 13. | Shyam Lal,<br>SSC (HQ)                | SSC (HQ)  |  |
| 14. | Vinod<br>Kumar, SSC<br>(HQ)           | SSC (HQ)  |  |
| 15. | Suresh Ram,<br>SSC (HQ)               | SSC (HQ)  |  |
| 16. | Tek Singh,<br>SSC (HQ)                | SSC (HQ)  |  |
| 17. | Ashok<br>Kumar<br>Manjhi, SSC<br>(HQ) | SSC (HQ)  |  |
| 18. | Braham Pal,<br>SSC (HQ)               | SSC (NR)  |  |
| 19. | Md. Akram,<br>SSC (ER)                | SSC (NER) |  |

The contempt petition was thereafter dismissed with liberty to the applicants to raise their grievances by filing a fresh original application before the appropriate forum.

The order dated July 12, 2016 by which such permission was granted reads as follows :

*“In the instant case, cut off date for regularization in respect of applicants who are senior to the said 3 incumbents regularized on 07.09.2005 is 07.09.2005 and that of other applicants is 15.02.2016. Date of initial engagement has been taken as date of continuous engagement where year of initial engagement and continuous engagement are same. Where year of initial engagement and continues engagement are different 1<sup>st</sup> January of the year of continues engagement has been taken as the date of continuous engagement due to non availability of records”.*

This has resulted in the filing of CPC.350/2/2015 (O.A. 1156/2013) in which the impugned order was

passed on October 11, 2018. The condition of the original applicants before the Tribunal was that although one O.P. Tiwari had less number of years of service compared to the present applicants, said O.P. Tiwari was granted relief by the Hon'ble Delhi High Court in W.P. (C) No. 16760/2004 similar relief has been extended to the original applicants.

It appears from the record that O.P. Tiwari was reengaged and while he acquired eligibility only on December 31, 2003 i.e. long after the present applicants he was regularized/absorbed whereas Bimal Chandra Paul, the first applicant in the original application who was engaged on July 10, 1986 and acquired eligibility on December 31, 1995 was denied.

The Tribunal referred to the combined eligibility list of Casual Labourers in SSC Headquarters as would be evident from the internal page 7 of the impugned order and had examined the said list made the following observations:

*“We further note that in terms of the number of days and number of years put in, the applicant No. 1, Sri Bimal Chandra Pal rendered much more years of service to the Department vis-à-vis O.P. Tiwari, yet, O.P. Tiwari was regularised while the applicants still languish. Instructions were sought from the department as to why the present applicants would not deserve the same relief as granted to Mr. O.P. Tiwari. Pursuant thereto the respondents came up with a reply that the present applicants were overage as on the date of consideration.*

The aforesaid events clearly show that the present applicants have been discriminated as against the regularized Casual Labourers on flimsy terms. It is undeniable that O.P. Tiwari and similarly circumstanced other Casual Labourers with temporary status who although had put in much less years of service, compared to the present applicants, found favour with the respondents in getting their regularization/absorption way ahead of the original applicants.

The learned Tribunal relied upon the decision in the case of **Narendera Kumar Tiwari and Others vs. State of Jharkhand and Others** reported in **(2018) 8 SCC 238** and observed that it is made to put an end to the discrimination faced by the original applicants and disposed of the matter by directing the authority concerned to pass appropriate orders by granting benefit to the original applicants at par with Mr. O.P. Tiwari and other similarly circumstanced Casual Labourers with temporary status who were regularized despite rendering less years of service than the present applicants. There cannot be any doubt that the present applicants have completed 10 years of service on the date of promulgation of the regularization rules. If they have completed 10 years of service they should be regularized unless there is some valid objection to their

request like misconduct as observed in **Narendera Kumar Tiwari (supra)**.

In view of the aforesaid facts and taking into consideration the length of service rendered by the said persons, we are of the view that the direction passed by the learned Tribunal does not call for any interference. The writ petition accordingly stands dismissed.

The authority concerned shall expedite the process and complete the entire process within two months from the date

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

**(Amrita Sinha, J.)**

**(Soumen Sen, J.)**