

Central Administrative Tribunal
Principal Bench

O.A.No.2622/2002

Hon'ble Shri Shanker Raju, Member(J) ..

New Delhi, this the 16th day of July, 2003.

Amod Kumar
s/o Shri Inder Dev Paswan
r/o 774, Sector 2,
Sadiq Nagar
New Delhi.

... Applicant

(By Advocate: Sh. M.K. Bhardwaj)

Vs..

Union of India and others
Through

1. The Secretary
Govt. of India
Ministry of Commerce
Nirman Bhawan
New Delhi.
2. The Under Secretary
Ministry of Commerce
Department of Commerce
C-Wing, Nirman Bhawan
New Delhi.
3. The Section Officer
Govt. of India
Ministry of Commerce
C-Wing, Nirman Bhawan
New Delhi.

4. Mr.

5. Mr. and Mrs. S. Mohd. Arif, for Respondents

(By Advocate: Sh. S.Mohd. Arif, for Rs-1 to 3).

O R D E R

By Shri Shanker Raju, M(J):

Applicant, through this OA, alleges discrimination, As Respondents No.4 and 5, who are daily wagers and being juniors, had been engaged by dispensing with the services of applicant, Directions have been sought to engage the applicant in place of Respondents No.4 and 5 and also to consider him for regularisation against a vacant post. --

2. Notices have been issued to Respondents No.4 and 5 through Respondent No.2.

3. MA 1110/2003 filed by the respondents, interalia, prayed modification of the orders as Respondents No.4 and 5 had worked with them only upto August, 2002. However, they serve the Dasti notices to respondents No.4 and 5 on the addresses mentioned in the aforesaid MA. By an order dated 3.7.2003 respondents have been directed to be served through applicant. Dasti notices could not be served as per the statement of Shri Bhardwaj on the non-availability of addresses, however, a speed post had been sent. As the service has not been affected, Registry ~~shall~~ ^h delete Respondents No.4 and 5 from the array of parties.

4. In the present OA, applicant was engaged on casual basis w.e.f. 14.5.2001 and he was allowed to work till 10.8.2001. It is contended that though the applicant was discontinued by memorandum dated 8.8.2001, he continued to serve till 21.8.2001 and by another memorandum, engagement has been extended till 15.9.2001 which was further extended till 15.10.2001. It is contended that though technical breaks have been given, applicant's name had not been considered for further engagement and temporary status as per the DoPT's Scheme of 10.9.1993.

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5. Applicant being aggrieved, OA 198/2002 was filed, wherein directions have been issued to consider him for grant of temporary status and not to dispense with the services of applicant till they make a decision.

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6. Applicant served the Court's order upon respondents on 21.3.2002 but he was disengaged on 21.3.2002. However, later on his request was turned down as the DoPT's Scheme dated 10.9.1993 has been declared as one-time measure.

7. Finding wilful disobedience CP No.90/2002 has been filed. By an order dated 23.5.2002, Division Bench of this Tribunal, punished the contemnor with a fine of Rs.1000/- and cost of Rs.1000/- as well.

8. As per the applicant, by a notice dated 20.5.2002 engaged two persons Rakesh and Sanjay, i.e., Respondents No.4 and 5 ignoring the claim of applicant, giving rise to the present OA.

9. Learned counsel for applicant, Sh. M.K.Bhardwaj, contended that engaging juniors despite availability of work on casual basis, ignoring the claim of the applicant, is in violation of Articles 14 and 16 of the Constitution of India.

10. On the other hand, Shri S.Mohd. Arif, learned counsel for respondents vehemently opposed the contentions and stated that in so far as the temporary status is concerned, as the applicant was not in

engagement on 1.9.1993 and the Scheme of DoPT dated 10.9.1993 being declared as one-time measure, his claim was rejected.



11. In so far as the engagement is concerned, it is contended that no regular employees are recruited to fill the water in the desert coolers. However, in the first week of February, i.e., on 3.2.1993, the Staff Selection Commission circulated a letter on apprising the respondents regarding decision of the Government, in OA 1489/90, that those casual workers who could not be adjusted in the Commission for want of work, a requisition was directed to be sent to the other Ministries/Departments. Thereafter the SSC requested that as and when there is a requirement of any daily wagers, a requisition may be sent to the SSC. Accordingly, having failed to nominate daily wagers by SSC, a requisition was sent to the Employment Exchange. Accordingly, two daily wagers were nominated from Employment Exchange and were engaged for three months.

12. In so far as respondents No.4 and 5 are concerned, ^{they} are not working as casual workers in the office of respondents as on date.

13. Applicant, who was employed intermittently for filling the water in the desert coolers in summer season and was subsequently on jobs of casual nature, was also engaged. It is stated that there is no concept of seniority for casual labour, even appointed through Employment Exchange, on seasonal works.

14. In the aforesaid backdrop, it is stated that there is no discrimination meted out to the applicant and a blanket ^{is} direction as to engagement of casual worker in preference to juniors and outsiders cannot be countenanced in view of the settled position of law by the Delhi High Court.

15. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as the grant of temporary status or regularisation of the applicant, in pursuance of DoPT's Scheme of 10.9.1993 is concerned, as the applicant was not in engagement on 1.9.1993 his case is not amenable to the DoPT's Scheme of 10.9.1993 and rejection of which by the respondents does not suffer from any legal infirmity.

16. As regards engagement of juniors is concerned, in the absence of services to Respondents 4 and 5. the contention putforth by the applicant's counsel that Rakesh and Sanjay were juniors has not been established.

17. In so far as further engagement of applicant is concerned, as a casual labour who performs seasonal work on intermittent basis, has no right to be engaged on casual basis as that is subject to the availability of work. No seniority list of casual worker is maintained as such discrimination under Articles 14 and 16 of the Constitution of India cannot be invoked in a case of daily wagers.

18. In the result, for the foregoing reasons, OA is disposed of with a direction that in the event, respondents require the services of casual worker to perform intermittent work, applicant shall be considered in accordance with relevant rules and instructions. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/