

Central Adminisrative Tribunal
Principal Bench

O.A.No.1843/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 29th day of April, 2003

John s/o Shri D.Prasad
r/o WZ-799/3, Palam Village
4 -5, Near Shiv Mandir
New Delhi.

.. Applicant

(By Advocate: Sh. U.Srivastava)

Vs.

1. Union of India through
Ministry of Human Resources & Development
Department of Culture
Govt. of India
New Delhi.
2. The Director
Anthropological Survey of India
West Block, Wing No.6
First Floor, R.K.Puram
New Delhi.
3. The Head of Office
Anthropological Survey of India
27, Jawaharlal Nehru Road
Calcutta - 16. .. Respondents

(By Advocate: Ms. Harvinder Oberoi)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Claim of applicant is directed against the order dated 11.6.2002 whereby, in pursuance of directions contained in order dated 22.3.2002 in OA 1911/2001, his claim for re-engagement on daily wages has been rejected. Applicant has sought quashment of this order with direction to consider him on casual basis with all consequential benefits.

2. Applicant had served with respondents as daily casual labourer from October, 1996 till September, 1998 for a period of 528 days. He was discharged from service by a verbal order dated 1.10.1998. Applicant challenged his disengagement in

OA 2035/1998 wherein the respondents had taken the stand that applicant himself had stopped from going to work directions have been issued on 28.4.1999 in OA 2035/98 to respondents that in the event, the applicant prefers a representation, his case for re-engagement would be considered on availability of work in preference to juniors and outsiders. Accordingly, a representation has been filed by applicant, but without any response. CWP No.1100/2000 filed by applicant before the High Court of Delhi was rejected in limine on 13.3.2000. Applicant's review in CM No.7970-71/2000 was also rejected by the High Court of Delhi vide order dated 15.9.2000. SLP 159/2001 filed by applicant was withdrawn by an order dated 23.2.2001 with liberty to pursue other remedies as are permissible under law.

3. Applicant filed OA 1911/2001 wherein the counsel for respondents took different stand otherthan what has been taken in the earlier OA that the applicant had acted in a manner which showed him unreliable employee as such he was not engaged. Tribunal while taking cognizance of the aforesaid fact, directed the respondents to consider his re-engagement on casual basis in the event any of his juniors or freshers have been engaged.

4. Respondents vide impugned order rejected the request of applicant on the ground that due to violation of Official Secrets Act, services have been terminated on 1.10.1998, giving rise to the present OA.

3
13

5. Shri U. Srivastava, learned counsel for applicant, contended that in reply filed by the respondents in OA 1911/2001 a ground has been taken that the applicant when asked to post a letter unauthorisedly opened the same and Xeroxed it, as a result of serious allegation, which is in violation of Official Secrets Act, and as per his bad record, he could not be engaged.

6. In so far as the juniors and freshers are concerned, the same has not been disputed.

7. In the light of the aforesaid, it is stated that while issuing directions, the Tribunal though observed the contentions put forth by the respondents as to his bad record but yet directions have been issued to consider re-engagement. This according to the applicant is contradictory stand taken by respondents in OA 2035/1998, the grounds to deny engagement was that applicant had left his job of his own choice but in the instant OA, alleged involvement of the applicant in an act which is covered under Official Secrets Act, the engagement has been denied. It is further stated that respondents have taken a vague assertion and have not produced any record to substantiate the aforesaid allegation. Accordingly, the order passed by them runs on the face of the Tribunal's directions contained in OA 1911/2001 and the order passed is contumacious. However, as though no new cause of action can be gone into, he has preferred the present OA being aggrieved with the impugned order dated 11.6.2002.

8. In so far as the juniors and freshers are concerned, it is contended that this fact has not been disputed, as such applicant has a right to be engaged on casual basis.

9. On the other hand, Ms. Harvinder Oberoi, learned counsel appearing for the respondents denied the contentions and stated that as the misconduct of applicant was serious and as applicant was engaged upto 30.9.1998, he was not engaged further. As the respondents have considered the applicant's claim for re-engagement, the orders does not suffer from any legal infirmity.

10. I have carefully considered the rival contentions of the parties and perused the material on record. When the applicant had earlier approached the Court in OA 2035/1998, which was disposed of after the disengagement of applicant, respondents have not taken a plea of bad record of the applicant and have taken the plea of abandonment of the service of applicant on his own, OA 1911/2001 stand in contrast has been taken to describe the applicant as unfit on account of alleged involvement in serious misconduct. The aforesaid assertion firstly is vague inconclusive and indefinite lacking material particulars like the date, of the misconduct has not been reflected by the respondents. Moreover, no document has been produced to substantiate the past record of applicant. In my considered view, the aforesaid defence of respondents is to circumvent the directions of this Court and is unfounded. However, the aforesaid contentions was taken note in earlier OA 1911/2001 and directions have

been issued to consider re-engagement of applicant in the event his juniors or freshers have been engaged. This clearly makes it apparent that the aforesaid plea of the respondents has been impliedly rejected.

11. Moreover, as it is not in dispute, that juniors and freshers have been engaged, impugned order dated 11.6.2002 cannot be sustained in law. Accordingly, OA is partly allowed. The impugned order dated 11.6.2000 is quashed and set-aside. Respondents are directed to re-engage the applicant on casual basis, subject to availability of work. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/