

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.298/2001

New Delhi, this the 18th day of October, 2001

Sunil Pal
s/o Shri O.P.Pal
r/o House No.30/130
Park Road
Raja Mandi
Agra.

... Applicant

(By Advocate: Ms. Meenakshi, proxy of Mrs. Rani Chhabra)

Vs.

1. Union of India through
its Secretary
Ministry of Communications
Department of Telecommunication
Sanchar Bhawan
New Delhi.

2. The Chief General Manager
Telecom Project North Zone
Kidwai Bhawan
Janpath
New Delhi.

3. The Director Telecom Project
IV Floor, Tax Bhawan
Agra.

4. The Divisional Engineer
Telecom Project
Ground Floor, Tax Bhawan
Agra.

... Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R (Oral)

By Shanker Raju, Member (J):

Heard both the counsel.

2. The present OA is directed against an order passed by the respondents on 12.7.2000 in pursuance of the directions of this Court contained in order dated 3.4.2000 in OA No.942/1999, which was filed earlier by the present applicant. In the aforesaid order dated 3.4.2000, a Co-ordinate Bench of this Tribunal had directed the respondents to verify

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their records in terms of their own Schemes issued in 1989 and 1991 and in case the applicant satisfies the terms and conditions laid down therein, he may be accorded regularisation and other benefits and it is also directed that if the respondents have any work of the nature the applicant was doing earlier as a daily wager with them, and in case the applicant makes an application for being considered for re-engagement, they may consider re-engaging him as a daily wager in preference to outsiders and freshers. In pursuance thereof, the respondents have considered the case of the applicant and passed a detailed speaking order and on finding the applicant having not completed 240 days in any of the years from 1996 to 1999 and the fact that his case is not comparable with the case of Shri Ashok Kumar, rejected his claim for regularisation. As far as re-engagement is concerned, it is stated that as they have no work of similar nature available with them the claim of the applicant for re-engagement cannot be given affect. The learned proxy counsel for the applicant states that the applicant is having the log-books to show that he had worked for more than 240 days which entitles him to be considered for regularisation. But having failed to produce the same despite numerous opportunities have been accorded to him by this Court. I take adverse inference to this contention of the applicant. The contention of the learned proxy counsel for the applicant is that the applicant's case is identical to that of Shri Ashok Kumar, who has been regularised, but the applicant who had also worked for more than 240 days in consecutive years, the action of the respondents in disengaging and denial of regularisation is not legally

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sustainable. It is also stated that the respondents have wrongly distinguished the case of the applicant to that of Shri Ashok Kumar who had worked from 1993 to 1996 in two consecutive years and having completed 240 days he has been confirmed temporary status. In this back ground, it is stated that the applicant has been meted out the deferential treatment, which is in violation of Articles 14 and 16 of the Constitution of India.

3. The learned counsel for the respondents, strongly rebutting the contentions of the applicant, stated that the claim of the applicant has been considered in pursuance of directions of this Court and had informed that the applicant had never worked as casual labour from 27.11.1996 to 23.1.1999 but has worked as Lorry Driver however, he has not completed 240 days which entitles him to be considered for regularisation as per the Scheme of 1989 and 1991. It is also stated that 1989 instructions would have no application as the orders dealing with the regularisation of such casual labourers on or before 30.3.1985 in Group 'D' and he has been worked as Casual Lorry Driver in Group 'C' post, is not entitled for accord of regularisation.

4. It is also stated that the applicant has himself stopped coming to work w.e.f. 23.1.1999 and placing reliance on a decision of State of Himchal Pradesh Vs. Suresh Kr. Verma reported in JT 1996 (2) SC 455, the Apex Court held that appointment as daily wager cannot have indefeasible or vested right to hold a civil post. Lastly, it is contended that the claim

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of the applicant has gone into in detail by the respondents and having found not amenable to the Schemes, he has not been regularised and there is no work available with them to which the applicant has been entrusted prior to his dis-engagement, he cannot be re-engaged as such.

5. I have carefully considered the rival contentions of both the parties and perused the material on record. In view of the directions of this Court earlier, wherein the respondents have been directed to consider the case of the applicant after verification of his work in accordance with the Schemes of 1989 and 1991. I find that the respondents vide letter dated 12.7.2000 have elaborated the provisions of the Scheme and considered the regularisation of the applicant in both the Schemes. As the Scheme of 1989 was not to be made applicable to a Group 'C' post to which the applicant was performing the work as Lorry Driver, the Scheme of the 1991 clearly stipulates completion of 240 days service continuously for accord of regularisation in one year. From the records, it has been stated that the applicant has never worked for 240 days in any of the years and this contention of the respondents is not at all rebutted and the Scheme of the applicant in rejoinder that log book is to be produced to indicate that he had worked 240 days is not justified for the simple reason that despite being accorded several opportunities the applicant has failed to produce the log book. This gives rise to an adverse inference being drawn against the applicant. In this view of the matter Schemes of the respondents and their stand

that the applicant has not completed 240 days which has not been proved otherwise is to be accepted in toto.

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6. As regards, the claim of the applicant that he has been discriminated in the matter of regularisation with that of Ashok Kumar's case supra this violates Articles 14 and 16 of the Constitution of India, the respondents in their reply have clearly stated that Ashok Kumar had worked for more than three years and after a small break was re-engaged from April, 1996 to October, 1996 and had four years experience from November, 1993 to April, 1996. Ashok Kumar had completed 240 days whereas the applicant from the date of his engagement has not completed 240 days in any year of continuous engagement as such two unequals cannot be meted out an equal treatment. The action of the respondents is not contrary to the provisions of Articles 14 and 16 of the Constitution of India.

7. Having regard to the discussion made above, and having found no merit of the claim of the applicant the OA is dismissed. No costs.

8. Before parting with, it is observed that in case the respondents have availability of work of the similar nature which was being performed by the applicant before his dis-engagement, he shall be considered for engagement in preference to outsiders and juniors.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/