

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 3421/2001

(9)

Tuesday, this the 29th day of October, 2002

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Prem Chander,
S/o Shri Jamuna Dass,
R/o E-6/5, Malviya Nagar,
New Delhi

... Applicant

(By Advocate : Shri Vibhu Shankar)

Versus

1. Central Public Works Department,
through
Its Director General (Works),
Nirman Bhawan, New Delhi-1
2. The Executive Engineer,
Asian Games Civil Div.3,
CPWD, Jawaharlal Nehru Stadium,
Lodhi Road Complex, New Delhi-3
3. The Executive Engineer,
P.Division, CPWD,
Sadiq Nagar, New Delhi

... Respondents

(By Advocate : Shri A.K. Bhardwaj)

O R D E R (Oral)

Shri Justice V.S. Aggarwal, Chairman :

The applicant, by virtue of the present application seeks a direction that he should be reinstated in service. He further claims that the service of the applicant should be treated as continued from May 1985 and he should be regularised in the said service.

2. The relevant fact is that the applicant had been engaged by the respondents in April 1985 on hand-receipt basis for typing job in the Central Public Works Department, New Delhi. This continued till January 1987. From February 1987 he was taken on job basis. In November 1987 his services were disengaged. Subsequently the

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applicant had continued to work and filed OA No. 1392/1999 which was decided by this Tribunal on 4.7.2001. The prayer for regularisation had not been acceded to, but the operative part of the said order reads -

"8. With regard to the second claim of the applicant for regularisation of his services as E-C/LDC on similar lines as granted by the Tribunal in Dr. Jitender Singh's (supra), we find that the facts in that case are distinguishable from the present case. In the present case, the applicant has been appointed only on daily rate job basis and not on ad hoc basis as in the case dealt with by the Tribunal in the order dated 8.10.1991 (OA 1259/1990). It is also relevant to note that during the time when the applicant was engaged as daily rate on job basis, he could have applied to the SSC for regular selection as Clerk and could have been selected subject to his fulfilment of the eligibility conditions. He has not done so for the past several years and presently, he is over aged. Therefore, the only direction that can be granted taking into account the particular facts and circumstances of the case is that, in case the applicant applies for consideration for selection through the SSC in the next selection to be held by them, the respondents shall consider granting him suitable age relaxation for the period he has rendered service as E-C/LDC. The competent authority shall consider such a recommendation sympathetically in accordance with the relevant rules and instructions. In case the applicant qualifies in the test as given above, he shall thereafter be entitled to the pay scale applicable to the E-C/LDC in accordance with the rules."

3. The petition as such has been contested. According to the respondents, the applicant is not entitled to the grant of any one of the prayers.

4. So far as the request for regularisation is concerned, as already pointed above, the same has been considered by this Tribunal and the said request had been rejected. The decision of this Tribunal would operate as

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res judicata. No doubt, there are some other points which could be considered in this regard, but it will be inappropriate to do so because what could have been argued and if not argued will not permit the applicant to reargue the matter all over again. Necessarily, finality has to be given to the earlier decision.

5. In that event the learned counsel stresses that the order dispensing the services of the applicant is illegal because no show cause notice has been served before passing the said order dated 16.11.2001 and further that in the decision of this Tribunal there is no reference of terminating the services of the applicant particularly when applicant has continued to work for almost 15 years, may be on temporary/ad hoc basis.

6. On a careful consideration of the said submissions, we find that in the peculiar facts neither of the said conditions are of any avail. Indeed, in the order passed by this Tribunal there is no reference of terminating the services of the applicant, but the impugned order only refers to the order passed by this Tribunal and does not rely upon the said order to terminate the services.

7. So far as the issuance of the show cause notice before dispensing the services is concerned, the principle of audi-alteram partem will not apply before dispensing the service of a person who has been so appointed on a temporary/ad hoc basis. Similarly, long continuance of a person against a post which he is occupying and not

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appointed according to rules, will not confer a right. In that view of the matter there is no illegality in the impugned order so as to permit us to interfere.

8. For these reasons, the OA is devoid of merit, must fail and is dismissed.


(S.A.T. RIZVI)
Member(A)


(V.S. AGGARWAL)
Chairman

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