(2)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.622/2001

New Delhi this the 6th day of November, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vikram Lal S/o Sh. Ram Baran,
R/o A-157, Minto Road,
New Delhi. -Applicant

(By Advocate Dr. S.P. Sharma)

-Versus-

Union of India, through
the Secretary,
Ministry of Agriculture,
Deptt. of Animal Husbandary & Dairying.
Krishi Bhawan,
New Delhi. -Respondents

(By Advocate Shri Rajiv Bansal)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant a casual labour has sought temporary status and regularisation and further re-instatement with all consequential benefits. The applicant has also assailed his termination resorted to in 1997. The applicant was engaged as a unskilled casual labour with the respondents after having sponsored through the Employment Exchange. According to him from 24.4.95 to March, 1997 he has completed 206 days in view of the Scheme of DOPT dated 10.9.93. It is contended that as the Scheme is on going as held by the Apex Court in Sarjuk Prasad v. Union of India, his termination was bad in law and is entitled for accord of temporary status as well as regularisation. As regards limitation the applicant has preferred an MA-554/2001, inter alia, contending that as the applicant was waiting for a decision of the Apex Court which was ultimately rendered in 2001 and as he has preferred a representation to the respondents on 10.2.99 the same is still pending, as such limitation may be

condoned in the interest of justice. The claim of the applicant for completion of 206 days his on the basis of a decision of this court in OA-1555/99 in Dewan Singh v. Union of India dated 20.1.99 wherein it has been held that being a welfare scheme the required number of 206 days is to be computed on the basis of rendering service by a casual labour during 365 days to be computed from the first day of service put in without any reference to calendar or financial year. In a way it is the period of 12 months that a casual labour to complete requisite service of 206 days. In this conspectus by placing reliance on the attendance rolls from January, 1997 to July, 1997 it is contended that the applicant has completed 206 days from September, 1996 to July, 1997 which comes to 242 days. It is also contended that the decision in Dewan Singh's case (supra) has been affirmed by the Apex Court and the applicant therein has been re-instated in service.

2. On the other hand, strongly rebutting the contentions of the applicant the learned counsel for the respondents Shri Rajeev Bansal contended that the OA is barred by limitation as the cause of action arisen to the applicant on 24.7.95 has been assailed in 2001 after a lapse of three and a half years and the ground for condonation of delay that the decision of the Apex Court was awaited is not legally sustainable in view of the decision of the Apex Court in Bhoop Singh v. Union of India & Ors., JT 1992 (3) SCC 322 wherein it has been held that a decision of the Court cannot be resorted to as a cause of action for the purpose of limitation. Apart from it, no valid explanation has been tendered by the applicant for filing the cases belatedly. It is also contended that

in view of the decision of the Full Bench of this Court in Mahabir & Ors. v. Union of India, 2000 (3) ATJ 1, it has been held that the law of limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985 which prescribes filing of OA within one year from the cause of action equally applies to the casual labours also. As regards the working is concerned, it is contended that the applicant had not completed 206 days right from 1995 to 1998 and the break of 15 days cannot be treated as technical break to be ignored. As the applicant is not amenable to the criteria laid down in the DOP&T Scheme as he has failed to render continuous service of one year, i.e., 206 days in an year he is not entitled for grant of temporary status.

3. In the rejoinder, the learned counsel for the applicant has contended that in the decision of Dewan Singh's case it has been held that technical breaks are also required to be ignored and as such he has completed 206 days which entitles him for accord of temporary status and despite availability of work his services have been dispensed with arbitrarily.

4. I have carefully considered the rival contentions of the parties and perused the material on record. Having given careful thought to the same, I am of the considered view that part from limitation the claim of the applicant is liable to be rejected on merits. The applicant was disengaged and his services have been terminated in March, 1997 the applicant has preferred this OA on 9.3.2001, i.e., after a lapse of about four years. The grounds taken by the applicant in his MA are absolutely

vague and legally tenable. The resort of the applicant to contend that he has preferred a representation after he has come to know about the decision of the Apex Court is not correct. The respondents have denied receipt of any representation and the applicant also has not annexed copy of the same with the OA. There is no proof of any receipt of the representation by the respondents produced by the applicant. It is settled principles of law that a cause of action cannot be available to an applicant on the basis of the decision of the Court. In this view of mine I am fortified by the ratio of the Apex Court's decision in Bhoop Singh's case (supra) wherein it has been held that the judgment cannot be the basis for computation of limitation or cause of action. The applicant should have filed this OA within one year from the date of his termination, i.e., in March, 1997 and having failed to file the same the present OA is hopelessly barred by limitation and as per the ratio of the Full Bench decision in the case of Mahabir (supra) limitation applies to a casual labour too. I respectfully follow the same. The grounds taken by the applicant in his MA are not at all convincing and rational. As such MA for condonation of delay is rejected and the case of the applicant having been found hopelessly barred is not valid.

5. However, in the interest of justice the merits of the case are also to be gone into. I find that the applicant has not completed 206 days within one year continuously as envisaged under the DOP&T Scheme of 1993. If I go along with the applicant and follow the ratio in Dewan Singh's case (supra) and compute the period of the applicant from September, 1996 to July 1997 and in view of

the record produced by the respondents and as per the attendance rolls annexed by the applicant he has failed to complete 206 days and the entire period comes to around 194 days. As regards contention of the applicant that technical breaks should be condoned, there has been a break of of 15 days which cannot be treated as a technical one and the contention of the applicant that after the break he was engaged would have an effect of ignoring the same, cannot be countenanced. If the respondents have work they have to prefer the applicant in preference to the juniors and outsiders. What really matters is completion of 206 days. As the applicant has utterly failed to show that he has completed requisite days he is not amenable to the provisions of the Scheme of DOP&T and also not entitled for accord of temporary status.

6. In the result, the OA fails and is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)