

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1039/1999

New Delhi this the 4th day of January, 2002.

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

Prabhu Nath,
S/o Shri Munni Ram,
r/o Jhugi No.H-94,
Sanjay Colony,
Okhla Phase-I,
New Delhi-110020.

-Applicant

(By Advocate Shri P.R. Madhavan)

-Versus-

1. Union of India through
Secretary, Deptt. of Culture,
Shastri Bhawan, New Delhi.
2. Director-General,
Archaeological Survey of India,
Janpath, New Delhi.
3. Superintending Archaeologist,
A.S.I. Delhi Circle,
Safdarjung Tomb,
New Delhi.
4. Dy. Superintending Horticulturist,
A.S.I. Safdarjung Tomb,
New Delhi.

-Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R (ORAL)

The applicant, who has served as a casual labour on daily wages with Archaeological Survey of India (ASI, for short) and having working in Garden Branch, Delhi Circle of A.S.I. since 1988, has challenged his termination w.e.f 24.7.97 and has also sought re-instatement with all consequential benefits as well as grant of temporary status and regularisation against Group 'D' post.

2. The learned counsel of the applicant stated that from 1988-96 the applicant has served for more than 240 days in each calendar year but was arbitrarily

(2) (24)
27

dis-engaged. According to the Scheme' for accord of temporary status envisaged in OM dated 10.9.93 casual labour is to be accorded temporary status who has rendered continuous service of at least one year and having worked for at least 240 days in case of offices observing six-day week and 206 days in case of offices observing five-day week. According to the applicant, who belongs to SC category, he has been arbitrarily discriminated despite working in various circles of ASI and Garden Branch he has not been considered for accord of temporary status which had already been bestowed on his juniors and colleagues in 1996. It is also stated that he has approached the National Commission for SC and ST and despite recommendations of the Commission for accord of temporary status, the same has not been complied with by the respondents. According to him several juniors and similarly circumstance on the basis of clause 4 (3) of the Scheme have been conferred temporary status by taking into account their working in recruitment wing and territorial circles, which, *inter alia*, includes Durgapal as well as Anandhi Devi. According to the applicant the letter written by the Deputy Superintendent it has been certified that the applicant in 1994-95 had worked for more than 240 days in Garden as well as other circles of ASI, which should have been computed towards accord of temporary status to him as he fulfils all the eligibility criteria in the years 1994 and 95. As regards his name being sponsored through the Employment Exchange and the condition that he should be engaged on 1.10.89 the same is no more an impediment for accord of temporary status, as in several decisions of this Tribunal the condition of sponsorship through Employment Exchange has been done away and in view of the decision of the Apex Court in Sariu K Prasad v. Union

of India, CA NO.5299/93 by an order dated 10.8.94 the Apex Court has held that casual labours should not be ineligible for absorption, if, at the time of engagement they are within the prescribed age limit. The learned counsel for the applicant further stated that the applicant has been accorded an opportunity to assail the proceedings as he has been re-engaged by the respondents w.e.f. 23.8.99 but was dis-engaged on 7.1.2000, as such he filed CP-17/2001 which was dismissed and the RA-323/2000 filed in CP has been rejected on 1.10.01.

3. The learned counsel for the respondents, on the other hand, by referring to the decision of the Apex Court in All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association & Ors. v. Union of India & Ors., JT 1996 (1) SC 287 contended that the recommendations of SC/ST Commission are not binding on the Government and further stated that the applicant was not eligible for grant of temporary status. As per the Scheme of DOPT of 1993 he had never completed 240 days in a calender year from 1989 to 1996 and was not engaged through Employment Exchange. The casual labours who were eligible as per OM dated 10.9.93 have been considered for grant of temporary status. As the applicant had worked in different establishments the same has not been clubbed together and he has worked only 99 days in 1994 and 101 days in 1995. The applicant was engaged for seasonal work. It is denied that the applicant has been terminated and his juniors have been retained. Lastly, it is contended that since 23.8.99 the applicant has been engaged and continuing as long as the work is available and as regards grant of temporary status he would be considered in accordance with law. As regards the number of days

(20)

specified by their letter dated 6.7.99, it is contended that the applicant has never worked for the requisite days and as per the Director General instruction No.3 issued vide letter dated 9.7.70 it is contended that the term 'office establishment' would mean Circle/Branch/Office and not the Survey, as a whole, and as such the eligible casual labours in the Circle/Branch/Office are to be considered and the working cannot be clubbed together for the purpose of accord of temporary status.

4. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view and as per the available official record the applicant has failed to qualify the eligibility condition and having worked in a calendar year for a period of 240 days continuously. The resort of the applicant by way of letter dated 16.8.96 to contend that in 1994 he has completed 240 days cannot be taken into consideration as, as per the letter of the respondents issued in 1970 the service in Branch/Circle Office would not be clubbed together for the purpose of reckoning the period of 240 days. The applicant having failed to work in the Garden Office for 240 days at a stretch has failed to complete the requisite period of 240 days.

5. As regards the recommendation of the SC/ST Commission is concerned the same is not binding on the Government and having meticulously going into the record the respondents have rightly arrived at the decision that the applicant having failed to complete the requisite period is not entitled for grant of temporary status. There is nothing on record to establish that the juniors, as contended by the applicant, have been accorded temporary

status by treating their working in different Circles and Garden for computing 240 days. However, as regards sponsorship through Employment Exchange and the fact that the applicant was not working on 1.10.93 would no more be an impediment for consideration of temporary status. As the applicant has failed to establish that he was eligible under the DOPT Scheme of 1993, has no valid claim.

6. However, I find from the reply of the respondents that the applicant has been continuously working with the respondents since 23.8.99 and has completed the requisite number of days, the respondents have to consider his case for accord of temporary status and regularisation against Group 'D' post.

7. In the result and having regard to the reasons recorded, I dispose of the present OA with the direction to the respondents to consider the applicant's case for accord of temporary status and further regularisation against group 'D' post in view of his being eligible under the DOPT Scheme in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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