

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1090/99

New Delhi this the 26th day of June 2000.

HON'BLE MRS. DR. A. VEDAVALLI, MEMBER (J)

Maresh Kumar

...Applicant

(By Advocate Shri R.K. Shukla

-Versus-

Union of India & Others

...Respondents

(By Advocates Shri Rajinder Nischel

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of
the Tribunal?

NO

(DR. A. VEDAVALLI)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1090/99

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New Delhi this the 26th Day of June 2000

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Mahesh Kumar,
Son of Shri Jai Singh,
R/o 490 Gautam Nagar,
Herdeopuri,
New Delhi-110 049.

Applicant

(By Advocate: Shri R.K. Shukla)

Versus

1. Principal Chief Controller of Accounts,
Central Board of Direct Taxes
9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

2. Senior accounts Officers,
Office of Chief Controller of Accounts,
Central Board of Direct Taxes,
New Delhi.

Respondents

(By Advocate: Shri Rajindr Nischal)

The applicant, Mahesh Kumar, a Casual Labourer who was dis-engaged on 1.4.1999 is aggrieved by the action of the respondents in not re-engaging him even though he was sponsored through the Employment Exchange.

2. The applicant was initially engaged as Casual Labourer w.e.f. 7.8.1998 and worked in the capacity from time to time till 31.3.1999. He was dis-engaged w.e.f. 1.4.1999 by a verbal order passed by the Respondents.

3. The main reliefs sought by the applicant in this OA are as under:-

(a) issue of direction to the respondents to re-engage him as Casual Labourer.



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(b) conferment on him the benefit of temporary status, and

(c) regularisation of his service thereafter as per the guidelines contained in the DOP&T OM dated 10.9.1993.

4. Heard the learned counsel for both the parties. Pleadings, material papers and documents placed on record have been perused. Matter has been considered carefully.

5. The Learned Counsel for the applicant, Shri R.K. Shukla, submitted that the applicant worked for 234 days under the Respondents continuously and became eligible for conferment of temporary status as per the guidelines dated 10.9.1993 issued by the DOP&T (Annex. A-2). It was also submitted by him that when the applicant made a representation dated 10.4.1999 to the Respondents for re-engagement and also grant of temporary status (Annexure A-4), they have assured him of re-engagement provided he gets his name sponsored by the Employment Exchange. Thereafter, applicant's name was sponsored along with some other persons by a communication dated 23.4.1999. In the list of 19 sponsored candidates, applicant is placed at Serial No. 10 and all the others in the list except the candidate at Serial No. 11 are juniors/freshers to him. Learned counsel for the applicant contended the Respondents have adopted a

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pick and choose policy and have thrown out the applicant vis-a-vis his juniors. He submitted that the office of the Respondents in which he was working observed a 5 days week and he has worked for more than the requisite number of 206 days. H further submitted that the applicant ought to have been conferred temporary status by the Respondents under the provisions of the DOP&T OM dated 10.9./1993 mentioned supra. Instead, he was thrown own out arbitrarily and his juniors and freshers were engaged in preference to him and hence he is entitled for the reliefs which he is seeking in this O.A. Strong reliance was placed by the learned counsel for the applicant on the Judgement of Supreme Court in Central Welfare Board & Ors. Vs. Ms. Anjali Bepari & Ors. JT 1996(8) SC1 and on the order of this Tribunal, in Rameshwar Vs. Union of India ATJ, 1992 (1) 417 (CAT) (PB) and also another order of this Tribunal dated 10.8.1999 in OA 1641/99 (Ranjeet Singh & Ors. Vs. Union of India & Ors. (CAT) (PB). He prayed that for the above reasons and grounds this OA may be allowed with costs.

6. The OA is contested by the Respondents. Learned counsel for the Respondents, Shri Rajinder Nischal, submitted that Casual Workers/Labourers are engaged strictly on merit basis on the recommendation of the Selection Committee constituted for this purpose and that seniority criteria is not applicable in the case of engagement of Casual Labourers for sessional or intermittent type of work. Accordingly , even the candidate whose seniority has been admitted

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by the applicant himself was also not selected by the Selection Committee. Further, it was submitted that the applicant worked only for 174 days as this is clear from the monthwise attendance in respect of the applicant placed at Annexure R-1. Moreover, he has not worked continuously for more than 206 days as alleged by him and hence the applicant is not eligible for conferment of temporary status as per the DOP&T OM dated 10.9.1993 (Annexure R-2). It was further submitted by the Learned counsel for the Respondents that no assurance regarding his re-engagement was given to him as alleged by the applicant and no representation was ever received. He prayed for the above reason that the OA may be dismissed with costs.

7. It is seen from the particulars given in Para 4.1 that the counter filed by the Respondents that the applicant worked for the following periods.

- i) From 7.8.1998 to 6.11.1998
- ii) From 18.11.1998 to 17.2.1999 and
- iii) From 24.2.1999 to 31.3.1999

8. It is obvious from the above that the dis-engagement was only for a few days and such breaks are considered to be artificial breaks. No reasons have been given by the Respondents as to why the applicant was dis-engaged for a few days and the Employment Exchange was approached to send a fresh panel every time. The reasons for non selection of the applicant also have not been given. It is not known as to whether due weightage for his past

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experience on the job was given or not by the Selection Committee. Moreover, Learned counsel for the Respondents has not been able to establish with supporting material as to why the seniority rule is not applicable to the Casual Labourers who are engaged for work of seasonal or intermittent nature. Further, the Respondents in reply to the contention of the applicant in Paras 5 (B) and 5 (C) of the OA relating to retention of two of his juniors in service and non-compliance with the principle of "last come first go" have given "no comments" as their reply in the counter affidavit. Learned counsel for the Respondents also has not been able to explain as to why the principles laid down in Bepari's case (Supra) have not been followed in the present case. In the circumstances it is quite clear that the Respondents have acted arbitrarily in dis-engaging the applicant while retaining his juniors in service and have not complied with the well established principle of "last come first go". However, it is not known as to whether work is still available with the Respondents and two juniors viz., Brajeshwar and Vivek have not been impleaded as Respondents in this case by the applicant. In the circumstances no adverse order can be passed against those persons.

10. In view of the foregoing discussion and in the facts and circumstances of this case and in the interests of justice, the OA is disposed of with the following directions to the Respondents.

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1. Whenever suitable work becomes available in future and steps are taken by the Respondents to engage Casual Labourers, the applicant should be informed of the same sufficiently in advance and given an opportunity to apply for the job without insisting that the application should be routed through the Employment Exchange.
2. In the event of an application being submitted by the applicant, the same should be considered on merits and in accordance with the relevant Rules and instructions by the Selection Committee.
3. Due weightage must also be given to the past service of the applicant under the Respondents.
4. In case he is found fit and eligible as per the relevant Rules, he should be given preference over his juniors and freshers, in accordance with law.
5. In the event of the applicant's selection, conferment of temporary status and subsequent regularisation etc. should be

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duly considered by the Respondents
at the appropriate time in
accordance with law.

Order accordingly, No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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