

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.57/99

New Delhi, this the 9th day of December, 99.

HON'BLE MR. S.P.BISWAS, MEMBER (A)

Sh. Inderpal Singh, S/O Sh. Bhawar
Singh, Flat No.27, Plot No.2, Naveen
Apartments, Pitampura, New Delhi.

-----Applicant.

(By Advocate :Mr.P.I.Oommen)

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Union of India

Through:

1. Secretary, Ministry of Defence,
South Block New Delhi.
2. Dy. Director General Mil.
Farms, Quartermaster General's
Branch, Army Headquarters, West
Block III, R.K.Puram, New Delhi.
3. Director, Military Farm &
Frieswal Project, Grass Farm
Road, Meerut Cantt. Meerut (UP).
4. Officer Incharge, Military Farm
Meerut Cantt.

-----Respondents.

(By Advocate :Mr. G.Giri)

O R D E R (Oral)

By Hon'ble Mr. S.P.Biswas, Member (A):

The short issue that falls for determination in
this OA is as under:-

2. Are the claims of the applicant as a casual
labour for re-engagement, grant of temporary status and
appropriate seniority having completed more than 240 days
of working sustainable in the eyes of the law?
3. The determination of the aforesaid legal issues
would require narration of the background facts. Those
are as hereunder in brief.

✓ 4. The applicant a casual labourer was initially engaged in July, 1996 and since then he has been in continuous employment without any break-in-service. He claims to have worked for two years and six months upto 31.12.98. He was, however, surprised to have received a verbal order on 1.1.99 by which his services were disengaged. The applicant would allege that the respondents' action in terminating his services is fraught by illegality and arbitrariness because of two reasons. Firstly, he stands fairly senior as per Annexure A-3 list and that there are juniors who continue to be in service ignoring his superior claims. This is in violation of the law laid down by the Apex Court in the case of Piara Singh & Ors. Vs. State of Haryana, JT 1992 (5) SC 179. To add strength to his argument, he has given a list of such peoples who continue to work replacing him.

5. It is also the case of applicant that he has completed a total of 732 days of casual work so far. To be specific, he had rendered 177 days of work in 1996, 309 days in 1997 and 246 days in 1998. The respondents are bound to offer him temporary status as per provisions stipulated in the OM of DOPT dated 10.9.93, the applicant would contend. It is also the claim of the applicant that the work is of perennial nature and the respondents have illegally resorted to termination of his services, ignoring his legal claim. Applicant would further claim that the respondents are acting against their own instructions contained in OM dated 15.12.98. As per para C of the said OM as at R-III, the respondents are

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✓ required to take appropriate actions not only for regularising the services of all those who have completed 240 days but also ear-marking of seniority for those are due for regularisation. Sh. P.I.Oommen, counsel for applicant gave other grounds in support of his claims including placing reliance on a few. OAs decided by the Tribunal such as OA No. 1942/98 decided on 21.9.998.

6. Sh.Gajender Giri, counsel for the respondents have controverted the claims. He raised fairly a large number of objections. We, however, bring out only those which are vital as far as the respondents are concerned. The main plank of the respondents attack on the applicant's claim is the plea of jurisdiction. It is submitted that the applicant is a resident of Dabka of Meerut City and hence should have filed this OA in Allahabad Bench of this Tribunal. Counsel for respondents submits that the applicant is a resident of Delhi is false and the case deserves to be dismissed on that account alone.

7. That apart, the respondents have no work to offer now and is facing situation of there being huge reduction of work. The respondents have also come out openly to say that only those employees have been regularised who were senior to the applicant and applicant's term for regularisation has not yet come. Counsel for respondents placed reliance on the decision of this Tribunal in OA 933/98 decided on 06.11.98 by Chandigarh Bench of this Tribunal. He drew our attention to details in para 2 of the said orders only to high-light that casual labourer

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is not a holder of civil post and hence the question of regularisation would not arise. Counsel for respondents would submit that the ratio in that OA is applicable on all fours with the facts and the circumstances of the present case. He also drew our attention to the judicial pronouncement of the Karnataka High Court in support of his contentions. It is also the case of the respondents that when the work is not available, it would be wrong on the part of the Tribunal to interfere in such matters and provide reliefs in such peculiar facts and the circumstances of the case.

8. It is in the background of details as aforesaid, this Tribunal is required to adjudicate the legality of the applicant's claim for re-engagement and offer of temporary status.

9. We have heard learned counsel for both the parties and perused the records. With reference to the respondents' objection in terms of jurisdiction, I find that the provisions at 6 of C.A.T. (Procedure) Rules, 1987 provide/permit the filing of an OA where the applicant is living on being terminated or dis-engaged in service. In the background of such a situation, the respondents' objection on jurisdiction cannot be sustained on the strength of procedures of A.T. Act.

10. It is not in dispute that the applicant herein has completed more than 240 days at least in two different years, namely, in the years 1997 and 1998. The details, in respect of these, have been furnished by not

less than the respondents in an authenticated paper as at Annexure R-2. The respondents cannot go back-words having certified the applicant's experience of requisite working that would entitle him for the conferment of temporary status. The applicant's plea thus commands acceptance. The respondents have thus faltered in not offering temporary status to applicant by this time.

11. The next issue that falls for determination is the legality of the applicant's claim for re-engagement. It is not in doubt that the respondents have utilised the services of some casual labourers who apparently have been engaged after the dis-engagement of the applicant from duty on 1.1.1999. This plea does not stand controverted by the respondents adequately. If the work is there and the casual labourers juniors to the applicant are being utilised, the claim of the applicant, being senior cannot be denied in terms of the law laid down by the Apex Court in the case of Inderpal Yadav Vs. Union of India 1985 (2) SCC 648. The law laid down by the Apex Court, for the purpose of utilisation of the service of the casual labourer, is that respondents are required to adhere to the principle of "first to come last to go' or vice versa. Admittedly, the law stands violated by the respondents in this case.

12. In the light of aforesaid details as well as the position of law, I allow the OA with the following directions:

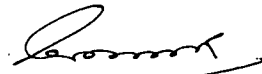
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i) The respondents are directed to consider offering temporary status to the applicant for having completed 240 days of work in two previous years. This claim cannot be denied in terms of scheme of the OM dated 10.9.93. This shall be done in three months from the date of issue of this order.

ii) The respondents shall also consider re-engaging the applicant, if they have resorted to utilising the services of any casual labourers, junior to the applicant.

iii) The applicant shall also be entitled for regularisation in terms of rules and regulations on subject.

iv) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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