

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 137/98

New Delhi, this the 4th day of September, 1998

HON'BLE SHRI N.SAHU, MEMBER(A)

Yogender Singh,
S/o Shri Jeet Singh,
R/o B-22, Ganga Vihar,
Gokul Puri, Delhi.

....Applicant

(By Advocate: Shri S.K.Gupta)

Versus

Union of India, through

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. D.D.M.F., O.M.G.S.,
Army Headquarters,
West Block No.3,
R.K.Puram, New Delhi.

3. Director, 1-F, and F.P.
C/o M.S.Scale and I.E.S.
Center, Grass Farm Road,
Meerut Cantt. Meetut.

4. Officer Incharge,
Military Farm,
Meerut Cantt. Meerut.

....Respondents

(By Advocate : Shri S.M.Arif)

ORDER(ORAL)

BY HON'BLE SHRI N.SAHU, MEMBER(A)

Heard Shri S.K.Gupta,1d. counsel for applicant
and Shri S.M.Arif,1d. counsel for respondents.

2. Prayer in this O.A. is to quash the verbal order
of discharge dated 30.6.96, to direct the respondents to
confer temporary status and also to re-engage the
applicant.

3. The admitted facts are that the applicant was
engaged by the Office of respondent no.4 on daily wage

for a hearing

basis from February, 1995 upto 13.5.95. Shri S.K. Gupta states that by mistake he mentioned that the name of the applicant was sponsored by the employment exchange. The enclosed certificate confirms that the applicant continuously worked for about 326 days during the period from February, 1995 to the end of December, 1995. Subsequently he was engaged on 9.5.96 against the leave vacancy upto the end of June, 1996. He was discharged thereafter. He states that Shri Kiran Pal and Shri Saranjeet were re-engaged later through these people are junior to him.

4. The respondents have filed the details of the applicant working as on 2.3.96. In this list, the name of the applicant was included at serial no.58. It was after his name that a number of other names like Sharanjeet, Vipin Kumar and Amarjeet are mentioned. Ld. counsel for applicant wants to prove from this that these were juniors to the applicant. The most important submission made by Shri Arif is that the three persons mentioned above have been working through employment exchange before the applicant joined and, therefore, they are treated by the Department as seniors. The earlier period of work of the applicant was not through employment exchange and therefore on the authority of the instructions of the Deptt. of Personnel & Training (copy of instructions to be submitted by Shri Arif), it is submitted that persons who are not sponsored by employment exchange cannot be considered for re-engagement and conferment of temporary status.

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5. Ld. counsel for applicant has brought to my notice a decision in the case of Gulshan Kumar & ors. (O.A.2154/97) dated 13.2.98 delivered by me in which on the authority of the decision of the Apex Court in the case of Excise Superintendent Malkapatnam vs. K.B.N.Visweshwar Rao & ors. - JT 1996(9) S.C. 638, it was held that although employment exchange is the primary source for sponsoring candidates in accordance with their seniority and other qualifications, the Department should also call for the names by publication in newspapers, display on notice boards and announcement in radio and television. The idea conveyed by the apex court was that proper opportunity should be made available to all eligible candidates. Sponsoring of candidate by the employment exchange is not an exclusive condition and non-sponsoring would not invalidate the appointment. The instructions of the Ministry of Personnel need to be reviewed in the light of the apex court decision cited above.

6. Having employed the applicant for a period of more than 300 days and then further re-employing him for a period of another two months, the respondents are not justified in discharging him in preference to juniors on the ground that the initial appointment was not on account of sponsoring by employment exchange. Besides being unreasonable, there is another flaw in the respondents' stand. In the case of Ghaziabad Development Authority vs. Vikram Chaudhary & ors. - JT 1995 (5) SC 636, the Supreme Court has laid down that once a person is engaged, his seniority should be respected and persons engaged shall figure in a register, whether they are engaged for short periods or long periods. The decision of the Supreme Court

K. Venkateswara Rao

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does not apply to cases of persons who are specifically engaged for a type of work like an electrician for repairing job for a day or two, but the decision of the Supreme Court fully applies to cases of the type we have before us. Engaging and disengaging at the whims and fancies of the Govt. is frowned upon in the above decision.

7. The order of discharge is hereby quashed. The respondents are directed to engage the applicant forthwith since the juniors are continuing and the respondents are further directed to consider temporary status, in accordance with the instructions of the Ministry of Personnel in this regard. They shall not also discharge the services of the applicant in future provided he is suitable and efficient, till his juniors continue to work and work is available.

8. O.A. is allowed. No order as to costs.

N. SAHU

(N. SAHU)
MEMBER(A)

/mishra/