

(B)

Central Administrative Tribunal
Principal Bench

O.A. No. 1555 of 1998
M.A. No. 1927 of 1998
M.A. No. 2513 of 1998

New Delhi, dated this the 20 January, 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Shri Diwan Singh,
S/o Shri Dileep Singh,
R/o A-238, Kidwai Nagar (East),
New Delhi-110023. Applicant

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through
the Secretary,
Ministry of Agriculture,
Dept. of Animal Husbandry
and Dairying,
Krishi Bhawan,
New Delhi-110001.
2. Shri Raman Kumar,
Employed as Peon
in the Dept. of Animal Husbandry
and Dairying
C/o Respondent No.1
3. Shri Sajjan Singh Yadav,
Employed as Peon,
in the Dept. of Animal Husbandry
and Dairying,
C/o Respondent No.1 Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R

By Hon'ble Mr. S.R. Adige, Vice Chairman (A)

Applicant seeks temporary status followed by regularisation from the same date as in respect of Respondent No.2 and 3 together with difference of pay and allowances between the post of Daily Rated Casual Labourer and the Peon on regular basis with interest @ 18% thereon as also costs.

2. Heard both sides.

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3. Admittedly applicant and others were engaged as Daily Rated Casual Labour workers w.e.f. 1.9.94 and were disengaged on 10.4.96. Against their disengagement applicant and seven others filed O.A. No. 786/96 which was disposed of by order dated 27.5.96 (Ann. R-1) with a direction to respondents to reengage applicants as casual labourer if and when work became available in preference to persons who had rendered lesser length of service than them, and also to take up their case for conferment of temporary status and regularisation in accordance with law and the relevant Scheme. Applicant and seven others thereafter filed CP-204/97 alleging non-implementation of the aforesaid orders dated 27.5.96 which was disposed of by order dated 11.9.97 noting respondents' order conferring temporary status on one of the applicants, and also respondents' counsel's undertaking that orders conferring temporary status on the remaining applicants in accordance with the Scheme were on its way and the same would be issued in a week or so. Thereafter respondents issued orders dated 16.9.97 (Ann. R-4) conferring temporary status of one of those applicants. As regards the remaining applicants of that O.A. and the C.P. including the present applicant, respondents took the stand that they had not been found eligible for grant of the same as none of them had put in more than 206 days in a year to become eligible. Thereafter the remaining six applicants filed CP-303/97 against non-conferment of temporary

status which was disposed of by order dated 24.11.97 (Ann. R-6), after noting respondents' order dated 23.9.97 in which it had been stated that the six applicants were not entitled to temporary status in accordance with the Scheme. Those applicants were given liberty to challenge the orders dated 23.9.97 in accordance with the Scheme.

4. The main reason why respondents have denied applicant the grant of temporary status is contained in Para 5 of respondents' reply, wherein it has been contended that applicant has not put in 206 days of service in a calender year. In this connection Respondents' counsel Shri Bansal has stated during hearing that respondents have interpreted the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 promulgated vide DP&T's O.M. dated 10.9.93 as requiring the casual labourers to have completed 206 days of continuous service in a calender year to acquire eligibility for grant of temporary status.

5. A persual of the aforesaid O.M. makes it clear that nowhere in it has it been stated that the required number of days of service have to be completed in a calender year or indeed in a financial year. This is a welfare measure and the Tribunal, in a catena of judgments, none of which have been stayed, modified or set aside, has held that, to become eligible under the aforesaid Scheme

the required number of days of service in a year (240 days or 206 days as the case may be) has to be rendered from the first day of service put in by the casual labourer, and would conclude at the end of 365 days without any reference to a calendar year or a financial year. In counting the 240/206 of days of service⁴ for eligibility within the overall 365 days mentioned above, the technical breaks are also required to be ignored.

6. Respondents have also taken the plea that the O.A. is fit to be dismissed, as applicant had not disclosed in Para 7 therein that he had filed O.A. No. 786/96; C.P. No. 204/97 and C.P. No. 303/97. It has also been contended that the O.A. is hit by limitation, and that applicant has not specifically impugned respondents' order dated 23.9.97 rejecting applicant's claim for conferment of temporary status, although opportunity had been given to him to challenge the said orders vide Tribunal's order dated 24.11.97 in C.P. No. 303/97. A perusal of the O.A. makes it clear that applicant has made reference to O.A. No. 786/94 as well as C.P. No. 204/97 and hence it would not be correct to say that he has suppressed making mention of the same. It is true that he should have also made mention of the C.P. No. 303/97 which was disposed of by order dated 24.11.97 but respondents have not been able to establish that non-mention of the C.P. No. 303/97 was actuated by mala fide motive on applicant's part. The ground of non-impugnment of the

respondents' order dated 23.9.97, also cannot be advanced to deny the applicant's claim when respondents themselves have not correctly interpreted DP&T's O.M. dated 10.9.93 while examining applicant's claim for grant of temporary status under the Scheme.

7. In the result this O.A. is disposed of with a direction to respondents to reexamine applicant's claim for grant of temporary status in accordance with the contents of DP&T's O.M. dated 10.9.93, in the background of what has been stated above, (namely without imposing the condition that the required 206 days of service in a year which should have been completed in a calender year or in a fiancial year, and after ignoring technical breaks), by means of a speaking order within two months from the date of receipt of a copy of this order. With effect from the date of grant of temporary status, applicant will be entitled to consequential benefits, including difference in pay

and allowances between what he draws as Daily Rated Casual Labourer and what he would draw in the prescribed time scale with arrears but without interest.

8. The O.A. is disposed of in terms of Para 7 above. No costs.

9. Since this O.A. is disposed of finally M.A. No. 1927/98 and M.A. No. 2513/98 have become infructuous and are dismissed.

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

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