

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1779 of 1998

New Delhi, this the 16th day of March, 2001

HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)

HON'BLE MR. M.P. SINGH, MEMBER (A)

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Shri Yogesh Kumar

S/o Shri Banwari Lal

R/o House No.394/5, Jhandewali Gali,

Mandawali, Delhi-110 092

...Applicant

By Advocate: Shri George Paracken.

Versus

1. Union of India  
Through Director General (Works)  
CPWD, Nirman Bhawan,  
New Delhi.

2. The Executive Engineer  
'P' Division, CPWD,  
Sadiq Nagar,  
New Delhi-110 049.

..Respondents

By Advocate: Shri R.V. Sinha.

ORDER(ORAL)

By Hon'ble Mr. Kuldip Singh, Member(Judl)

The applicant in this OA has assailed an order dated 27.8.1998 vide which his services have been disengaged on the ground that work is not available for the applicant now, therefore, the services of the applicant are not required and the applicant is being disengaged from work w.e.f. 27.8.98 onwards.

2. Challenging the same, the applicant has asserted certain facts which show that the applicant had been initially engaged as casual labourer in the year 1993 and he worked in the year 1993 for 188 days and for 291 days in the year 1994 and his services were then terminated. The applicant approached the Tribunal by filing an OA 638/95 which was allowed with the following

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directions:-

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"Both counsel agree that this OA may be disposed of with the direction to the respondents that subject to the availability of work they should consider re-engaging the applicant in preference to outsiders and those with overall lesser length of past service. Once the applicant is reengaged, upon a representation filed by him, the respondents should examine the question of granting him temporary status in accordance with the provisions of the Casual Labourers (Grant of Temporary Status Scheme) and other relevant rules and instructions on the subject.

In case there are any periods of time during which the applicant had put in work, but had not been paid by the respondents, they should also consider paying him for such periods, for which he had put in work".

3. Thereafter the applicant was reengaged w.e.f.

4.11.1996. He also claims that temporary status was conferred upon him. But again his services have been wrongfully terminated so he has prayed for the following reliefs:-

(i) Declare that the impugned letter of disengagement of the applicant wef 26.8.1998 issued vide No.10(52)EC-11/PDN/98/300/304 dated 27.8.1998 is illegal and arbitrary.

(ii) Direct the respondents to re-engage the applicant in service as Beldar with retrospective effect from 26.8.1998.

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(iii) Direct the respondent to make the payment of salary and other allowances for the period from 26.8.1998 till the order of re-engagement is issued, as the applicant was forced to remain without work because of the illegal action of the respondents.

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(iv) Direct the respondents to pay the wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA in accordance with the Casual Labour (Grant of Temporary Status and Regularisation) Scheme for the earlier period of service i.e. from 31.5.1993 to 26.8.1998 as the same was not paid to the applicant.

(v) Direct the respondent No.2 to make available the notional seniority list of those daily wagers including the applicant on sponsorship through the employment exchange indicating the initial date of engagement.

(vi) Direct the respondents to count the period from 26.8.1998 till the date applicant is re-engaged for the purpose of regularisation of the service of the applicant in the Group 'D' post in terms of the Grant of Temporary Status Scheme.

(vii) Direct the respondents to pay the cost of the application to the applicant.

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4. The main grievance of the applicant is that persons juniors and freshers to the applicant are still working and no proper procedure was followed to disengage him despite the fact that he has been conferred with temporary status or that he had qualified by rendering the working of required number of days which makes him eligible for being conferred with temporary status (casually). (39)

5. Respondents contested the OA. The respondents pleaded that the applicant was engaged purely on temporary basis for performing work of casual and intermittent nature. The respondents admit that the applicant was initially engaged in 1991 though there is a dispute regarding the number of working days of the applicant. However, the factum of filing of OA 638/95 is not disputed and it is also stated that in compliance with the order the applicant is re-engaged. But, it is denied that temporary status was ever conferred upon the applicant and it is pleaded that no work is available with the respondents so applicant cannot be re-engaged.

6. We have heard the learned counsel for the parties and have gone through the record of the case.

7. The applicant in his rejoinder has also submitted a detailed period as to when he had worked. At the request, directions were also given to the respondents to produce the list of casual labourers who are working with the respondents. The learned counsel for the applicant submitted that the list shows that there are workers working with the respondents who have

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been engaged for the first time in the year 1994 whereas the applicant was engaged in the year 1993 which shows that the applicant is senior to those employees and the applicant's services should not have been disengaged when particularly the juniors to the applicant are still working with the respondents. The applicant has further demonstrated that the letter Annexure-D which is an office order issued by the respondents that goes to show that the applicant has been disengaged as Beldar with temporary status and this letter has been issued after the decision of the OA 638/95, so applicant has all the reasons to believe that a temporary status has been conferred upon him and as such the manner in which the services of the applicant has been disengaged is altogether contrary to the scheme of the casual labourers which provides a different procedure for disengagement of casual labourer with temporary status. Hence, the applicant's counsel submitted that the applicant is entitled to be reinstated and is also entitled to other reliefs as prayed by him.

8. In reply to the above, the learned counsel for the respondents submitted that this description of temporary status in the office order dated 26.5.97 has been given by mistake whereas no specific order has been passed by the respondents to confer temporary status upon the applicant and the applicant had been re-engaged after the decision of the earlier OA only as a casual labourer for filling up the water in coolers, sorting out the old record for disposal and other work due preference was given to applicant. It was further submitted that other juniors are working in accordance with the Scheme of

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(AO)

engagement of casual labourers, but for the time being there is no vacancy available nor any work is available with the respondents on which applicant could be appointed. Moreover there is a ban imposed upon the department for engaging fresh casual labourer so the respondents are unable to engage the applicant.

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9. We have also gone through the record.

10. From a perusal of the record it is quite manifest that the applicant had been working since 1993 as a casual labourer and after the decision of his earlier OA, he had been re-engaged and has also worked till the impugned order of disengagement was passed. The list submitted by the respondents along with the additional affidavit also show that the persons junior to the applicant are still working with the respondents, hence it is a fit case where the applicant is entitled to have preference for being re-engaged over freshers or juniors.

11. It is also not known that under what circumstances the respondents had disengaged the services of the applicant when juniors to the him are still working.

12. As regards the conferment of temporary status is concerned, it is essential that a specific order of conferring temporary status is required to be passed and the counsel for the applicant was unable to show that any specific order was passed by the respondents conferring temporary status upon the applicant. So from the letter Anneuxre-D it cannot be presumed that temporary status

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had been conferred upon the applicant when the respondents have specifically denied that this description has wrongly been given by the author of the letter without any record. So in these circumstances we feel that as regards the right of re-engagement is concerned, the applicant has a good case to be re-engaged as a casual labourer since juniors to the applicant are still working. But as regards the conferment of temporary status is concerned, after being re-engaged the applicant shall make an appropriate representation to the respondents and the respondents after examining the record shall decide whether the applicant is entitled to be conferred with temporary status in accordance with the provisions of Casual Labourer (Grant of Temporary Status and Regularisation) Scheme and other relevant rules and instructions on the subject.

13. So we allow the OA and direct the respondents to reengage the applicant within a period of one month from the date of receipt of a copy of this order. No costs.

  
(M.P. Singh)  
Member (A)

  
(Kuldip Singh)  
Member (J)

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