

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1902/1998

New Delhi, this 8th day of March, 1999

Hon'ble Shri S.P. Biswas, Member(A)

(10)

Jitender Prasad  
s/o Nepali Ravidas  
P-I/68, Mangolpuri, New Delhi .. Applicant  
(By Advocate Shri Mahesh Kumar)

versus

Union of India, through  
1. Secretary  
Planning Commission  
Yojana Bhavan, New Delhi  
2. Section Officer  
Planning Commission  
Ro No.415, Yojana Bhavan  
New Delhi .. Respondents  
(By Advocate Shri N.S. Mehta)

ORDER

Applicant, who has worked as casual worker (group D) since 1992 with broken spells, is aggrieved by (i) respondents' verbal order disengaging his services from 1.10.98 and (ii) resorting to selection/appointment of fresh candidates pursuant to their demand letter No.12020/1/98-Admn.III. Consequently, applicant has sought reliefs in terms of issuance of directions to the respondents to restrain them from terminating his services, not to engage fresh hands and to regularise him as a Group D employee with all consequential benefits against group D post for filling up of which fresh demand has been sent to the Employment Exchange vide the aforesaid letter.

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2. Based on the details of number of days the applicant has worked under the respondents, as at para 4.1 of the OA, applicant claims that he is eligible for regular appointment as a group "D" employee.

3. It is the case of the applicant that the respondents continue to engage him from time to time during the last six years and as such he will be eligible for consideration of temporary status and regularisation on the strength of the existing Scheme dated 10.3.93. However, due to sheer misfortune of the applicant, the respondents did not stop acting illegally and even engaged 8 persons from open market as regular group "D" employees as late as 14.10.98. Applicant would argue that since he is working as casual worker under the respondents for the last six years, respondents should not have resorted to any fresh recruitment from outside without considering the applicant's case for re-engagement. Such an action of the respondents is against the law laid down by the apex court in a chain of judgements. Since the respondents have already prepared a seniority list of casual labours, their actions in deviating from the said list and making fresh appointments from open market are against the principles of natural justice and promissory estoppel.

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4. In the counter, respondents have submitted that the applicant was engaged for casual work of intermittent nature initially for a period of 3 months and was given extension for another 3 months till 15.10.98. He was not appointed against any regular post as is being claimed but was engaged because of temporary increase in the work because of continued Plan discussions at the floor of the respondents. In terms of the scheme for grant of temporary status and regularisation of casual workers issued by DoPT vide their OM dated 10.9.93, temporary status are granted to those casual labours who are in service on the date of issue of this OM and have also rendered continuous service of one year (206 days in a calendar year). Since the applicant had not put in continuous service of one year (160 days) in any calendar year, he could not be considered for grant of temporary status. Following the orders of this Tribunal dated 22.9.98 in OA 1845/98, applicant's case was considered but he was not found suitable for regularisation. Respondents have further submitted that casual labours are being engaged strictly in accordance with the list as maintained and temporary status are being granted to those casual labours who fulfill the requisite conditions as in DoPT's OM dated 10.9.93.

5. Respondents submit that the applicant still continues to work under them. It is also admitted that the applicant was engaged from various dates since 1992 and has been working with them with intermittent breaks. It is on this basis that the

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applicant has come before this Tribunal seeking directions to the respondents that his services may not be terminated and that the respondents should be directed not to make any fresh appointment to Group "D" category unless the applicant is regularised. (B)

6. I have heard the counsel for both parties and perused the records thoroughly. From the records made available before this Tribunal, respondents appear to have taken a stand that temporary status can only be granted to casual labourers who are in employment and who had put in one year of employment as on 10.9.93 i.e. when the present Scheme for the casual labourers was introduced by DoPT. In other words, the benefit of temporary status could not, as per respondents, be conferred on those who could complete the stipulated condition of service of one year after 10.9.93. That is the reason the Ministry of Personnel clarified on 26.2.97 that the temporary status could be conferred on casual labourers who were in employment on the date of issue of the OM namely 10.9.93 and had also put in atleast one year of continuous service on that date. The question is what will happen to those who were recruited before 10.9.93, were on job on that date but completed one year service (206 days) after 10.9.93? This question has since been answered by this Tribunal in a catena of orders in OA 169/97, 2013/89 and 1298/89. It may be mentioned here that all the Schemes based on Inder Pal Yadav's case, daily rated casual labourers' case etc. are intended to

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confer certain sense of security on casual labourers who have rendered certain periods of service and right to continue as long as work is available. The aims and objectives of each of this scheme are to ensure that those casual labourers who have rendered work should be continued and not disengaged as long as work is available. The latest pronouncements of the Supreme Court are to ensure that there should be reasonable safeguards to the interests of the casual labourers and that they should not be at the mercy of the employer who could unceremoniously throw them out in a whimsical manner. In **Ghaziabad Development Authority Vs. Vikram Chaudhary & Ors.** JT 1995(5) SC 636, the apex court laid down categorically that no casual labourer shall be turned out as long as work is available. Even if disengaged, they shall be preferred to freshers and outsiders as and when work is available. The law laid down by the apex court as aforementioned is applicable in the facts and circumstances of the present case. I find that the applicant has been working with the respondents right from April, 1992, though with intermittent breaks. He is, therefore, entitled to continue if work is available in preference to outsiders and freshers.

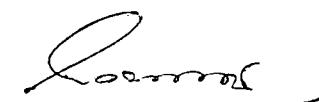
7. In the facts and circumstances of the case, the OA is disposed of with the following directions:

- (i) Services of the applicant will not be dispensed with or replaced by any other casual labour who are fresh and outsiders;

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(ii) While filling up future vacancies in Group 'D', applicant's case shall also be considered for temporary status and regularisation without insisting on his name being sponsored by Employment Exchange, subject to his fulfilling the qualifications/conditions laid down in the scheme dated 10.9.93. Conferment of temporary status/regularisation shall not be denied to the applicant even if he acquires the criteria of one year service after the Scheme was introduced. This is because the applicant has started working with the respondents prior to 10.9.93. Applicant shall also be entitled for age relaxation taking into account the period of service put in by him with the respondents as casual labour.

7. The CA is thus disposed of. No costs.

  
(S.P. Biswas)  
Member (A)

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