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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA.No.1942 of 1998

New Delhi, this 21st day of September, 1999.

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

Karmbir
S/o Shri Raj Singh
R/o J-309, C, Sewanagar
New Delhi.

... Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India, through

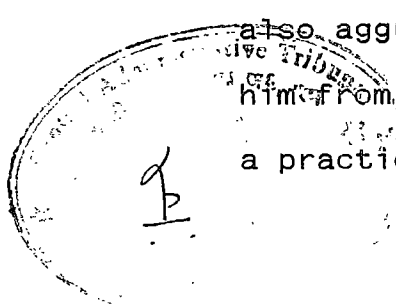
1. The Secretary
Ministry of Defence
Central Secretariate
North Block
New Delhi.
 2. The Director
Defence Institute of Psychological
Research, R & D Organisation
Ministry of Defence
Lucknow Road, Timarpur
Delhi-110054.
 3. The Administrative Officer
Defence Institute of Psychological
Research, R & D Organisation
Ministry of Defence
Lucknow Road, Timarpur
Delhi-110054.
- ... Respondents

(By Advocate: Shri Gajendra Giri)

O R D E R (Oral)

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

The applicant, a casual labourer under the respondent Ministry of Defence, is aggrieved by inactions on the part of the respondents in not conferring upon him temporary status based on the instructions dated 10.9.1993 issued by DoPT. He is also aggrieved by respondents' action in disengaging him from services of casual labourer by resorting to a practice of discrimination.



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2. The applicant would assail the respondents action on the basis that the respondents have acted against the instructions of the DoPT contained in O.M. dated 10.9.1993 in respect of not conferring temporary status. This is because once the applicant had completed 240 days of continuous working in a year as casual labourer, he became entitled to conferment of temporary status. In such a situation, the act of the respondents in terminating his services without giving him any notice is in violation of the provisions of O.M. dated 10.9.1993. It is also the claim of the applicant that the respondents perpetuated in an act of discrimination in that they have retained in services of a few casual employees juniors to him and have also demanded fresh persons from the Employment Exchange thereby violating the principles of "last to go first to come" enunciated by the Hon'ble Supreme Court.

3. In support of his claim the applicant would submit that he had been working with respondents continuously from 8.10.1997 to 30.9.1998 as well as from 1.1.1998 to 30.9.1998. It has also been submitted that in the offices of the respondents 2 & 3, the applicant had worked during the aforementioned period all the 5 days in a week.

4. As regards the act of discrimination, the respondents have engaged Shri Om Prakash, Raj Singh

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and Krishan as casual labourers who are allegedly juniors to the applicant. In an attempt to add strength to his contentions, the learned counsel for the applicant cited the decision of the Supreme Court in the case of Central Welfare Board Vs. Anjali Bepari & Ors [SC. SLJ 1996(2) 316].

5. The respondents have opposed the claims. It has been submitted that the applicant is not entitled for conferment of temporary status because of two reasons: firstly, such casual employees should have been engaged through the Employment Exchange and secondly, the applicant should have been completed at least 240 days (206 days in the case of 5 days a week) during one year.

6. The respondents would also submit that the applicant was employed as a casual labourer on contract basis with effect from 8.10.1997 to 30.6.1998 (153 days). That apart, instructions from the DoPT permits to employ casual labourer only through the Employment Exchanges. It is on this basis that the Employment Exchange was approached to sponsor the name of persons for casual labourer for a period of 89 days. Since the applicant did not report for duty after 30.9.1998, he was not given wages for the same.

7. Heard rival contentions of learned counsel for both parties and perused the records. Basically

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two legal issues fall for determination in this case. These are as under:

(i) Whether the respondents action in approaching the Employment Exchange for the purpose of sponsoring names of fresh casual labourers to work under them and deny re-engagement of the applicant herein on that basis is sustainable in the eyes of law ?

(ii) Whether the respondents have faltered in respect of engaging fresh casual labourers ignoring the claims of the applicant, admittedly senior to those who have been engaged later on ?

8. Determination of the first issue need not detain me any longer in the light of the judicial pronouncement of the Hon'ble Supreme Court in the case of Excise Superintendent Malkapatnam Krishna District, Andhra Pradesh Vs. K.B.N.V. Rao [JT 1996 (9) S.C.638]. It was held therein that it is common knowledge that many candidate are unable to have their names sponsored, though their names are either registered or are waiting to be registered in the Employment Exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the Employment Exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment. Better view appears to be that it should be mandatory for the requisitioning authorities/establishments to

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intimate the Employment Exchange, and the latter should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation as per requisition. In addition, the appropriate Department should call for the names by publication in the newspapers having wide circulation and also display on their office notice boards or announce on Radio, Television and employment news-bulletins. If this procedure is adopted, the principle of fair play would get subserved. In other words, while sponsoring by the Employment Exchange may be taken as the primary source, yet it could not shut out the eligible candidates for being considered from any other source. If this practice is followed, the equality of opportunity in the matter of employment would be ensured to all the eligible candidates.

9. In the background of the aforesaid legal position, the respondents action in seeking sponsorship of the candidates only through Employment Exchange for the purpose of engaging the casual labourers cannot be wholly supported in the eye of law. Therefore, the fact that the respondents have approached Employment Exchange could not be a legal basis to deny applicant's re-engagement. I find that the applicant's claim for conferment of temporary status has not been accepted by the respondents. While the applicant would claim of having worked for more than 240 days

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in a year which could entitle him temporary status, but the respondents would submit that he has worked for only 153 days. It is not for the Tribunal to make roving enquiries into the disputed facts and enter into a finding based on unsubstantiated factual details. It may however be mentioned that the applicant has given the details of his working in the rejoinder in support of his claims. It is for the respondents to recalculate the number of days of work the applicant had put in and offer the benefit of temporary status in terms of the scheme dated 10.9.1993. The applicant is required to make unassailable records/figures available to the department concerned to establish his claim effectively. Last issue is about the respondents action in engaging fresh hands. It is well settled in law that engagement of casual labourers has to be on the basis of "last to come first to go" and vice versa as per the law laid down by the Hon'ble Supreme Court in the case of Inder Pal Yadav Vs. UOI & Ors [1985 (2) S.C.C. 648]. The respondents' action in engaging fresh hands by means of resorting to Employment Exchange ignoring those who are already in the job as casual labourer or had worked with them earlier, cannot be supported in the eyes of law. If jobs are available and those who had worked continuously earlier are also available, the aforesaid law has to be adhered to. In arriving at the aforesaid view, this Tribunal gets direct support from the decision of the Apex Court in the

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case of Central Welfare Board & Ors (supra) Dealing with the case of casual employees, their Lordships in the aforesaid case held as hereunder:

"In view of the above stand, we direct the petitioners to continue the respondent in any other temporary scheme but keeping in mind the overall seniority of all the persons; the dispensing with the services should be on last-come-first-go basis, i.e., the juniormost incumbent has to go out first. As and when vacancies would arise, such persons whose services have been dispensed with will be taken back without following the practice of requisitioning the names of candidates from the employment exchange. They would be regularised only when regular posts are available and in accordance with the order of seniority."

10. In the background of the position of law as well as the facts and circumstances of the case, the OA deserves to be allowed and I do so accordingly with the following directions:

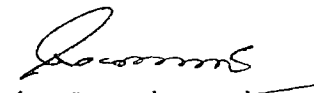
(i) If there are casual jobs available with the respondents, the applicant shall be considered for re-engagement immediately strictly in terms of the principle of "first to come last to go". In other words, the applicant will have a preference in re-engagement of casual jobs against the freshers and new comers.

(ii) If freshers/new comers taken on such jobs ignoring the superior claim of the applicant because of his comparative seniority, the latter will be at liberty to re-agitate the issue.

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(iii) The respondents shall conduct an exercise and identify the number of days the applicant had actually worked as casual labourer in a year and offer temporary status to the applicant herein in terms of the O.M. dated 10.9.1993 issued by the DoPT.

(iv) There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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