

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2338 of 1998

New Delhi, this the 19th day of May, 1999

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

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Budh Prakash
S/o Shri Mahendra Singh,
r/o House No: 126
Sakarpur,
Delhi.

-APPLICANT

(By Advocate: Ms.Richa Goyal)

Versus

1. Union of India
through its Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
Delhi.
2. Commissioner
Customs and Central Excise
Commissionerate
Meerut.
3. Superintendent,
Customs and Central Excise,
Opp. University,
University Road,
Meerut.
4. Inspector (Head Quarters)
Customs and Central Excise,
Opposite University,
University Road,
Meerut.

-RESPONDENTS

(By Advocate: Shri V.S.R.Krishna)

O R D E R(ORAL)

By Hon'ble Shri N.Sahu, Member(A)

Heard.

2. The applicant claims that he has been continuously working since August, 1997 and claims to have put in 240 days of service in one year. In the counter, this claim has been disputed. It is submitted that the applicant did not work continuously and on that ground

Harasmita

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the claim for temporary status is not accepted. The respondents also cited the letter of the Ministry of Personnel F.No.49014/4/90-ESTT(C) dated 8.4.91 to the effect that only those who are engaged from 7.6.88 onwards could seek the benefit of regularisation.

3. The grievance of the applicant is that the termination was on the basis of an oral order and as the applicant was entitled under the Scheme to the benefit of temporary status, the provisions of the scheme should have been complied with. An appropriate notice should have been given before retrenchment.

4. In the rejoinder, the applicant states that whosoever has worked for 240 days in a year or 206 days in a year where the working is five days in a week, is entitled to the benefits of the Scheme. Scheme has been held to be prospective in nature and even though there are short, intermittent breaks yet if the total number of working days is 240 in a year, then the benefits of the scheme should be given. In the rejoinder, the applicant confirms that he has worked in the Commissionerate continuously from August, 97 to October, 98 on daily wage basis and had completed 240 days. The other objection of the respondents that the applicant was not employed through employment exchange was also stated to be not a necessary precondition for the purpose of the benefits of the Scheme. It is also denied that the applicant worked intermittently and seasonally and it is re-affirmed that he has been continuously working in the department on daily wage basis from August, 97 to October, 98.

Ameswari

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5. Learned counsel for the respondents Shri Krishna states that before rushing to the Tribunal, the applicant should have filed a representation and made his claim before the competent authority.

6. I have carefully heard the rival counsel. It is well settled that short intermittent breaks need not come in the way of aggregating the number of days of work of daily wage casual labourer if otherwise he worked for 240 days in a year or 206 days in a year in an office of five working days in a week. The applicant asserts that he has been working from August, 97 to October, 98 for the prescribed period, continuously. It is settled law now there is no need for the applicant to be sponsored by the employment exchange in order to be eligible for the benefits of the Scheme or for conferment of temporary status. In the circumstances, the ends of justice will be met if the applicant within a week from the date of receipt of a copy of this order makes his claim in a representation before the competent authority, namely, respondent no. 4, who will verify the claim of continuous work and if the applicant had worked for the requisite period, shall within a period of two weeks from the date of receipt of the representation, convey to the applicant the decision of the respondents for conferment of temporary status. It is made very clear that short intermittent breaks which cannot be attributed to the applicant, like desertion or absconding, need not mean a break in service and would not necessarily disentitle him from the benefits of the claim. This is a case where the applicant reasserts that he has been working continuously. Applicant shall place the evidence before

the competent authority about this fact. After the passing of the order of temporary status, the applicant shall be permitted to rejoin and he can only be disengaged after giving proper notice in accordance with Scheme.

7. The O.A. stands disposed of as above. No costs.

N. Sahu
(N. SAHU)
MEMBER(A)

/dinesh/