

(22)

Central Administrative Tribunal
Principal Bench

O.A. 2418/1998

New Delhi this the 29th day of March, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Dinesh Sharma,
S/o Shri Sansar Chhand Sharma,
R/o C-1067, Netaji Nagar,
New Delhi-110023.

... Applicant.

Applicant in person.

Versus

Union of India through

1. The Secretary,
Planning Commission,
Yojna Bhawan,
New Delhi.
2. The Deputy Secretary,
Planning Commission,
Yojna Bhawan,
New Delhi.
3. The Under Secretary,
Administration,
Planning Commission,
New Delhi.

... Respondents.

Shri Mahender Chaudhary, Section Officer, Departmental
Official.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the oral order given by the respondents in March, 1998 terminating his services as Peon and also not conferring on him the benefits in terms of the DOP&T O.M. dated 10.9.1993.

2. This case is a part heard case. The departmental representative Shri Mahender Chaudhary, has produced the relevant documents called for by the Tribunal's order dated 18.2.2000, viz, the orders showing the position of the applicant when attached to the Members

YB

of the Planning Commission, namely, Dr. D. Swaminathan and subsequently with Dr. M.R. Srinivasan. The learned counsel for the parties had also been heard on 18.2.2000 when the relevant records had been called for. In the circumstances, I have carefully perused the pleadings and the relevant records, including those produced by the departmental representative, and I have also taken into account the submissions made earlier by the learned counsel.

3. The brief relevant facts of the case are that the respondents had appointed the applicant as a daily wager Peon in their department w.e.f. 1.1.1993. According to the applicant in May, 1993, the respondents had posted him as Peon with Dr. D. Swaminathan, Member, and he continued to work with him during the tenure of the Member. Thereafter, he was posted with another Member, Dr. M.R. Srinivasan, during his tenure till March, 1998. The applicant has claimed that he had been continuously working as casual labourer on a Group 'D' post with the respondents and had ~~ever~~^{also} worked in the same capacity when they had attached him with the Members. His grievance is that suddenly and arbitrarily the respondents have terminated his services treating him as an "Outsider". Shri. M.K. Bhardwaj, learned counsel for the applicant, had submitted that the termination of the applicant's services is not only arbitrary and illegal because the respondents have continued to employ several other juniors to the applicant, their contention that he is an "outsider" and only co-terminus with the Member is also

wrong and unjustified. The applicant has also submitted that as he has worked for more than five years as a Peon with the respondents from 1.1.1993 till March, 1998, he is entitled for grant of temporary status and regularisation in terms of the DOP&T O.M. dated 10.9.1993. He has also stated that the respondents have regularised the services of junior casual labourers and have also engaged other fresh persons on regular basis, thus violating his rights under Articles 14 and 16 of the Constitution. In this O.A., the applicant has, therefore, sought the relief to quash the oral order of his termination of service and other benefits, including temporary status and regularisation, taking into account his past service in terms of the DOP&T O.M. (supra). He has also prayed that he may be reinstated in service immediately as a Peon in the same capacity as he was working earlier.

4. The respondents in their reply have submitted that the applicant was employed as daily wage labourer in their department only for 91 days, that is from 31.12.1992 till 3.5.1993. According to them, thereafter the applicant was appointed as Peon and not on casual labourer basis in the personal staff of the Members, namely, Dr. D. Swaminathan, and thereafter Dr. M.R. Srinivasan, till their tenures as Members in the Planning Commission. Their contention is, therefore, that the appointment of the applicant was co-terminus with those of the Members and there is no illegality in the termination order passed in March, 1998 when Dr. M.R. Srinivasan demitted his office. They have submitted that as the appointments of the persons in the personal staff of Members of the Planning Commission are always co-terminus with the tenure

88

(25)

of the Members, and the applicant was very well aware of it, there is no merit in this O.A. and the same should be dismissed.

5. The departmental representative has also drawn my attention to the fact that as the applicant had worked admittedly for 91 days prior to his being attached with the Members, he did not fulfil the conditions laid down in the DOP&T O.M. dated 10.9.1993 and, therefore, he is not entitled to any relief, as prayed for in the O.A.

6. After careful perusal of the pleadings and records, including official records produced today, I am unable to agree with the stand taken by the respondents that the applicant is an "outsider" and his appointment as daily wager/labourer/peon was only co-terminus with that of the two Members of the Planning Commission. The relevant letter issued by the PS to Member(DS) dated 4.5.1993 addressed to the Administrative Branch (3) reads as follows:

"Dr. D. Swaminathan, Member desires that Shri Dinesh Sharma, at present working as a daily wage Peon, be appointed as Peon in his personal staff with immediate effect".

(Emphasis added)

In pursuance of the aforesaid request made by the PS to the Member, the respondents had attached the applicant to the Member as a daily wage Peon. It is clear from the aforesaid letter that even before the PS to the Member Dr. D. Swaminathan had made this request, the applicant was already employed as daily wage Peon, and similarly, when the PS to the Member Dr. M.R. Srinivasan made a request to the Administrative Officer of the

-5-

respondents on 8.8.1996 to attach the applicant as Peon with him, the respondents had also acceded to this request. It is in these circumstances that the applicant had been attached as Peon with the Members, no doubt in pursuance of their request. However, it is not denied by the respondents that even after the termination of the applicant's services, persons who are junior to him as daily wagers have been continued and regularised as Peons.

7. In the above facts and circumstances of the case, the contention of the respondents that the applicant's services were utilised by them which is co-terminus with the term of office of the Members, cannot be accepted. The applicant was already working with the respondents as daily wage Peon even prior to the first request made by the PS to the Member to the Administration on 4.5.1993. In this view of the matter, it is clear that the applicant had not worked for 91 days, as contended by the respondents but from 1.1.1993 till his oral termination by the order issued in March, 1998. During this period, he had completed the requisite number of days as casual labourer, as per the terms and conditions laid down in the DOP&T O.M. dated 10.9.1993.

8. In the result, this application succeeds and is allowed with the following directions:

(1) The termination of the services of the applicant by an oral order in March, 1998 is quashed and set aside;

28

(2) The respondents are directed to take the applicant in service as a daily wage Peon immediately, and in any case within one month from the date of receipt of a copy of this order;

(3) The respondents shall consider granting the due benefits to the applicant in terms of the DOP&T O.M. dated 10.9.1993, including the grant of temporary status and regularisation in the post, subject to his fulfilment of the terms and conditions mentioned therein and in accordance with the relevant rules and instructions.

(4) In the circumstances of the case, the applicant is granted Rs.1000/- as costs against the respondents.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'