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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 408/98

New Delhi, this the 26th day of October, 1998

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

Sohan Singh Negi,
S/o Shri Trilok Singh Negi,
R/o I-36, Garhwali Mohalla,
Laxmi Nagar, Delhi-92.Applicant

(By Advocate: Shri S.K.Gupta)

Versus

Union of India, through

1. Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. Chief Engineer,
N.D.-II,
C.P.W.D., Nirman Bhawan,
New Delhi.Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R (ORAL)

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

The application is filed against the verbal termination on 30.9.97. It is stated by the ld. counsel for applicant Shri S.K.Gupta that the applicant worked for 240 days in each year from 1991 to 1996 (both years inclusive). He passed 8th standard and he was enrolled in the Employment Exchange in the year 1990. The admitted facts are that the applicant had worked for 221 days from 25.5.92 to 31.12.92. He worked for 120 days from 1.1.93 to 30.4.93. He again worked for 151 days from 3.5.93 to 30.9.93. Finally he worked with Executive Engineer ('H' Division) for 153 days from 1.5.94 to 30.9.94. Details are not furnished by the respondents for the years 1995 and 1996. The applicant worked for 153 days for the period from 1.5.97 to 30.9.97. The contention of the respondents against the

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applicant's prayer for temporary status in terms of the order of the Department of Personnel and Training dated 10.9.93 coming into force from 1.9.91 is that the applicant did not complete 240 days in any calendar year. It is next contended that he was engaged by the respondents as a waterman on daily wage basis for filling water in the coolers for short spells from November, 1991 to September, 1997. It was submitted that the work would be purely temporary and the applicant could not claim regularisation in service. It is also contended that the applicant was engaged only for executing the work orders from 25.5.92 to 30.4.93 and as such he cannot be considered to be a casual labourer.

2. Shri Rajeev Bansal, 1d. counsel for respondents was asked pointedly as to the nature and contents of the work order. He informs that the orders are relating to filling up of water coolers. As this is the work for which he was engaged during the period 1991 to 1997 as a casual labourer, I think that mere change in the form of engagement as a work order executor would not change the nature of the job rendered by him. If the work order to be executed is only filling of water coolers which was a job to be rendered by a daily labourer regularly, the services so rendered do not amount to execution of contract for a specific work. The respondents have crudely tried to deprive a poor labourer of his right to livelihood by camouflaging his relationship with them as that between a Principal and a Contractor and not that of an employer and employee.

Kamal Singh

3. Shri Gupta, I.d. counsel for applicant cites the decision in O.A.1696/95 dated 13.11.95 (Kiran Kishore vs. Union of India) to say that the period of 240 days need not be confined to only a calendar year. It can be in a financial year or in a period of 12 months. If this relaxed criterion is taken, then the applicant has definitely worked for a period of 221 days in a five day week from 22.5.92 to 31.12.92 and more than 240 days in a period from 26.10.92 to 31.7.93. There is substance in the contention of the applicant that he was more or less regularly employed as a waterman with intermittent breaks from 1991 to 1997. This is a fit case whereby the respondents are directed to consider the applicant's case for temporary status and pass an appropriate order in that behalf in terms of the DOPT circular referred to above. That the applicant was engaged for a period of six long years shows the perennial need of his services and the respondents cannot get over by saying that no work is available. Respondents are hereby directed to engage the applicant in any situation that is vacant for a casual labourer either as a waterman or for any other work meant for a casual labour in any of their offices - Principal, ancillary or subordinate, within their zone. This direction shall be complied within a period of four weeks from the date of receipt of a copy of this order, and no junior or outsider shall be considered for any such engagement till the applicant is considered and engaged. It is made further clear that after the engagement of the applicant, he shall be considered for not only temporary status but eventual regularisation in accordance with rules and guidelines.

Kiran Kishore

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4. The O.A. is disposed of with the above
directions. No costs.

Narasimha
(N. Sahu)
Member (A)

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