

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 410 of 1998 decided on 2.7.1999

Name of Applicant : Sri Jai Prakash Gupta

By Advocate : Mrs. Rani Chhabra

Versus

Name of respondent/s Union of India & others

By Advocate : Shri K. R. Sachdeva

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. - No/Yes

transcribed
(N. Sahu), 21/7/99
Member (Admnv)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 410 of 1998

New Delhi, this the 2nd day of July, 1999

Hon'ble Mr. N. Sahu, Member (Admnv)

Sri Jai Prakash Gupta, s/o Shri Mahi
Lal Gupta, House No. 112, Model, Basti,
Gali No. 5, near Filmistan, New Delhi. - APPLICANT

(By Advocate Mrs. Rani Chhabra)

VERSUS

1. Union of India, through its Secretary, Ministry of Communication, Department of Telecommunication, Sanchay Bhawan, New Delhi.
2. Chief General Manager Telecom, West, Dept. of Telecom, Dehradun.
3. General Manager II (Telecom), Department of Telecom, Sector 39, Noida.
4. Area Manager (Telecom), Babu Banarsi Das Trust Exhibition Road, Bulandshahr.
5. Divisional Engineer (Phones), Telephone Exchange, Moti Bagh, Bulandshahr.
6. Sub Divisional Officer (Phones), Telephone Exchange, Moti Bagh, Bulandshahr - RESPONDENTS

(By Advocate Shri K.R. Sachdeva)

ORDER

By Mr. N. Sahu, Member (Admnv)

This OA is directed against the oral order of retrenchment of the applicant in the background of the following facts - The applicant was stated to be engaged as a Steno Typist/ Computer Operator on 16.1.1997 under respondent no. 4. The applicant worked till 11.12.1997, after which he was disengaged. Thereafter the General Manager, Noida entered into a contract with M/s Carrier Point. The contract was for a period of six months. In terms of

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the contract the contractor will supply a computer operator who will attend the work in Gautam Nagar and Bulandsahar district. The payment will be sent to the contractor after the supply of the monthly bills.

2. The disengagement is challenged by the counsel on the ground that if a person has been retrenched without any notice retrenchment compensation as required under Section 25-F of the Industrial Disputes Act has to be paid. The counsel also relies on a decision of the Supreme Court in General Manager Telecom Vs. S.Srinivasa Rao and others, I(1998)SLT 9 wherein the Telephone Department has been held to be an "industry". The learned counsel also cited the decision of the Supreme Court in the case of Gamon India Limited Vs. Niranjan Das, (1984) 1 SCC 509. That case dealt with an employee who was a Senior Clerk and was retrenched from service. That employee was recruited in accordance with the rules. The Industrial Tribunal held that this employee was retrenched and as the pre-condition for a valid retrenchment was not complied with he is entitled to a declaration that he continued to be in service.

3. I have carefully considered the submissions made by the learned counsel for the parties. I am afraid there is no merit in this Original Application. The applicant cannot claim regularisation as a matter of right. The Government of India, Department of Personnel & Training in O.M.No.51016/2/90-Estt(C) dated 10th September, 1993

had laid down a scheme for regulating the claims of casual labourers. This scheme states that casual labourers who had put in at least one year with 206 days in the case of offices observing five days week or 240 days in other cases, would be conferred temporary status. Certain benefits are conferred on these temporary status casual labourers as mentioned in para 5 of the scheme. Whenever a post is available in Group 'D' these temporary status casual labourers are considered as per their seniority and eligibility. If no posts are available then they continue as daily wage workers. These benefits are strictly confined to casual labourers and the Government have conferred these benefits in accordance with the directions of the Hon'ble Supreme Court in the case of Surinder Singh and others. Vs. Union of India delivered on 17.1.1986.

4. The applicant cannot claim the benefit of either temporary status or regularisation because he is not a casual labourer. He is a computer professional and a skilled worker. The respondents have hired the services of the applicant as of many others for certain specific jobs which are described in detail in the Original Application. This is an usual feature in a computerization programme. The Government departments entrust the work of Data Entry Operator or networking or installation of Systems either directly or through reputed agencies by a contract. The Government has every right as any other private operator to hire a professional for executing a specific type of work within a time

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frame. It can also hire any number of Data Entry Operators by paying daily wages. The applicant does not have any right to claim regularization merely because he has been engaged for a period of about one year. It is well known that such regularization can take place only when a post is available. Even when a post is available there are very well defined methods of recruitment by open advertisement; competition; and selection. These procedures are undertaken by impartial bodies like Public Service Commission. The applicant has been only hired for a specific type of work. Thus, even if a post is available, the applicant cannot stake a claim for appointment to that post on the only ground that he rendered the services earlier. Such services rendered may count for experience which might be considered by the recruiting agency at the time of selection. The case of the applicant in no way is different from the engagement of any professional like a lawyer or a doctor for a specific purpose or for a specific period and engagement by itself does not create any vested right. It is not difficult to find an authority for such an obvious proposition. It would suffice to extract the law laid down by the Hon'ble Supreme Court in State of U.P. Vs. Ajay Singh, (1997) 4 SCC 88 -

"There must exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench of the High Court was clearly in error in directing the appellant to regularise the services of the respondent who

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was working as Nursing Orderly on daily wages. to the post as and when the vacancy arises and to continue him until then."

5. The view taken by me in disposing of this Original Application, is also supported by the following orders passed in other similar cases.

1. Yasoda Rani Vs. Union of India, (1988) 38 ATC 231 (Single Bench Case)

2. Ms. Anita Bhamhani & another Vs. Union of India, O.A. 1044 of 1988 decided on 7.12.1998.

3. Km. Taruna Mihani Vs. Union of India and others, O.A. No. 2452 of 1998 decided on 11.1.1999.

6. The Industrial Disputes Act does not apply to a casual labour particularly to a case where the appointment is not in accordance with the recruitment rules.

7. In the result the OA is dismissed. No costs.

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(N. Sahu) 27/99
Member (Admnv)

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