

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TAX No 1285/1996

Decided on: 6.3.98

Hoshiyar SinghApplicant(s)

(By ~~Shri~~ Mrs. Meera Chhibber Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri M.K. Gupta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1285 of 1996

New Delhi this the 6th day of March, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Hoshiyar Singh
S/o Shri Fateh Singh,
R/o Sector-I, Jhuggi No. 426,
Dr. Ambedkar Basti, R.K. Puram,
New Delhi.Applicant

By Advocate Mrs. Meera Chhibber.

Versus

1. Union of India
through Secretary,
Ministry of Telecommunication,
Department of Telecommunication,
New Delhi.
2. Director General,
Posts and Telegraphs,
Dak Bhawan,
New Delhi.
3. Sr. Superintendent,
Air Mail Stg. DN,
New Delhi-110 021.
4. In-charge Set II
C/o Office of the Superintendent,
Palam TMO,
New Delhi.Respondents

By Advocate Shri M.K. Gupta.

ORDER

Applicant is aggrieved over the oral termination of his service as casual labourer in violation of the Scheme for regularisation of casual labourers as well as Section 25 of the Industrial Disputes Act, 1947. Applicant was engaged as a Seasonal Waterman under the respondents, i.e., under the Airmail Sorting Division from 11.6.1993 to 28.8.93 and thereafter at Palam TMO from 15.10.1993. The applicant avers that he has been working

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continuously at the aforesaid station as Safaiwala and that he was made to work in two shifts for which he was paid Rs.35/- per shift. He worked in this manner from 15.10.1993 to 7.5.1996. Although the respondents made him work in both the shifts in two sets, they started the practice of cutting their receipts for payment in some other's name on some of the days and when this was objected to by the applicant, the respondents orally restrained him from attending to his work and was thereafter disengaged with effect from 7.5.1996. The applicant claims to have completed 240 days in a year continuously by which service, he is entitled to be considered for temporary status as per the Scheme applicable to the casual labourers employed under the respondents. The applicant alleges that the work of Safaiwala as well as of Waterman is still available in the office of the respondents but he was denied continuous engagement and temporary status. He also alleges that his services were discontinued without following the procedure under Section 25 of the Industrial Disputes Act, 1947. He, therefore, prays that the respondents should be directed to regularise the service of the applicant and grant him temporary status so that he could be granted continuity of service along with consequential benefits.

2. Respondents in their counter-reply have averred that the applicant was selected for engagement as Seasonal Waterman on a purely temporary and ad hoc basis for 5 hours per day for a period of 89 days from 1.6.93 to 28.8.93 after which his engagement was terminated. Thereafter, he was again engaged at the Palam TMO as a

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contingent staff as a Dihari Safaiwala at the rate of Rs.7/-per hour. He was engaged by the Incharge in two different sets on each day for 5 hours in each set. It was stated that the applicant was neither an approved Dihari Mazdoor nor casual labourer under the respondents and he was engaged as an unapproved Dihari Mazdoor on voucher/contingent basis as and when the work was available. In view of the engagement of the applicant as Approved outsider safaiwala purely as contingent staff as and when required and was paid on voucher basis at the rate of Rs.7/-per hour. He was neither a part-time staff nor a casual labourer and, therefore, the question of termination of his services did not arise. The respondents deny that the receipt for the payment for the hours of work for which the applicant was engaged was cut in someone else's name, as alleged by him. They also aver that he was not engaged in any post of 8 hours on regular basis. For a few days he was engaged in two different sets as part-time Safaiwala for 5 hours in each set. They also maintain that Annexure P-II relied upon by the applicant showing him as an approved outsider safaiwala was wrongly issued as the applicant was not at all an approved hand but was only engaged on vouchers/contingent basis for 5 hours. In the light of this, the respondents maintain that the applicant is not covered for grant of temporary status under the Scheme in operation under the respondents. The respondents, however, submit that the applicant can be given part time work as and when available on voucher basis for 5 hours per day. His representation for continuing his engagement as before, is

still under consideration of the respondents. In regard to the contention of the applicant that he is entitled for grant of temporary status, the respondents submit that only full time approved casual labourers working for 8 hours per day and fulfilling certain conditions and who were employed before 1.10.1991, could be considered for temporary status as per the Scheme of the Department. As the applicant is not covered under the above Scheme, the question of grant of temporary status does not arise. There was no question of treating his service having been terminated within the meaning of Industrial Disputes Act, 1947, as there was no retrenchment in this case. The respondents, however, maintain that the applicant can be engaged as before as and when required by them in the sets of Palam TMO, i.e., he can be engaged as an unapproved Dihari Safaiwala, i.e., post of 5 hours in a set on contingent voucher basis.

3. I have heard the learned counsel for the parties and have perused the record.

4. The counsel for the applicant strongly relies on the Full Bench Judgment in Sakkubai and N.J. Ramulu vs. The Secretary, Ministry of Communications etc. and four others, Full Bench Judgments Volume III page 209, wherein it was held that the benefit of the Scheme, namely, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme under the respondents was also applicable to the Part-Time casual labourers as was decided by the Ernakulam Bench of the Tribunal. Counsel

for the applicant strenuously argued that the applicant was subjected to some sort of victimisation inasmuch as he protested against the malpractice of the respondents in engaging him for 10 hours at a stretch but giving the payment receipt only for 5 hours in somebody else's name. The counsel argued that the fact remained that the applicant had been continuously working for 10 hours since October, 1993, but the respondents had unjustifiably denied the applicant's rightful claim for being treated as regular casual employee and for conferment of temporary status under the Scheme. The counsel relied on the Apex Court judgment in Jagrit Mazdoor Union (regd.) and others Vs. Mahanagar Telephone Nigam Ltd., 1990 (Supp.) Supreme Court Cases page 113. I have seen this case and the facts and circumstances in this case are quite different. This relates to the case of Reserve Trained Pool Telephone Operators for absorption as regular employees. In this case the claim arose for their regularisation on par with the Scheme for grant of temporary status and regularisation scheme of casual labourers under the department. In the present case it has been specifically denied by the respondents that the applicant was ever treated even as a casual labourer but was only treated as unapproved Dihari Labourer on contingent voucher basis at the rate of Rs.5/- per day although he might have been engaged in two shifts and was paid also on this basis. This does not make him a regular casual labourer. As regards the reliance of the counsel on Sukkubai (Supra), the counsel for the respondents brought to my notice that the Full Bench view was not upheld by the Apex Court in

Civil Appeal No. 300-301 of 1994 and by order dated April 2, 1997, the Apex Court held that the Tribunal was not correct in coming to the conclusion that the Scheme for conferring temporary status is also applicable to part-time casual labourers. Quite apart from the above decision, the respondents do not even admit that the applicant was a part-time casual labourer. All that they contend that the applicant was an unapproved Dihari labourer paid on contingent/voucher basis. Even assuming that the applicant was engaged as a causal labourer on a part-time basis in two sets of 5 hours each, that does not make him a full time casual labourer. Thus, while on the one hand the contention of the applicant that he is a part time casual labourer is itself rightly disputed by the respondents, the question of treating him as being eligible for temporary status in the ratio of the Full Bench of the Tribunal in Sakkubai (Supra), does not arise in the light of the Apex Court's order in this case.

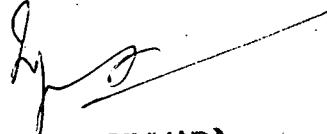
5. In the light of the above, this application has no merit.

6. However, respondents submit that the applicant can even now be engaged an an unapproved Dihari Safaiwala as and when required. In view of this, the application is disposed of with the direction to the respondents to consider reengagement of the applicant on the above basis as and when work is required and also consider his engagement as a casual labourer - full-time or part-time, subject to the work being available, in

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preference to outsiders and freshers for such engagement.

There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

Rakesh