

Central Administrative Tribunal
Principal Bench

O.A.No.1490/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 10th day of December, 1997

Dinesh Kumar Sharma
D-1034 Street No.23
Gamree Road
Bhajanpura
Delhi.

... Applicant

(By Shri N.M.Popli with Shri Yatendra Sharma, Advocates)

Vs.

1. Union of India through
Ministry of Defence
through its Secretary
Sena Bhawan
New Delhi.
2. D.D.M.F., O.M.G.S.,
Army Headquarters
West Block No.3
R.K.Puram
New Delhi.
3. Director M.F. and F.P.
c/o M.S.Scale and I.E.S.,
Center, Grass Farm Road
Meerut Cantt.
4. A.D.M.
c/o Collectors Office
1, Meerut Cantt.
Meerut (UP).

... Respondents

○ (By Shri S. Mohd. Arif, Advocate)

O R D E R (Oral)

The applicant is aggrieved that though he worked with the respondents for more than four hundred days in casual service for various periods between 1989 to 1994 he have been disengaged while persons junior to him have been retained. He has also been denied the benefit of the Scheme devised by the respondents for grant of temporary status to casual labourers and their regularisation.

Dr

14

2. The case of the applicant is that he has worked as daily wager from 20.7.1992 till 21.12.1992. Thereafter, he was re-engaged on 1.1.1993 and continued working in the workshop of the respondents till December, 1993. He also claims to have worked during 1994 from the very beginning till 24.5.1994.

3. The respondents in reply have also admitted that he has worked for the period from 23.7.1992 till October, 1994. In other words admittedly he had put in more than 240 days of casual service which entitled him to the benefit of the said Scheme, Annexure "C" issued by the Deputy Directorate General of Military Farms vide their letter dated 22.12.1993. Under the Scheme such casual labour who have rendered 240 days continuous service during the year are entitled to the conferment of temporary status with the consequential benefits as per the Scheme. They are also to be considered for regularisation in accordance with the provisions made therein. Thus the applicant was obviously entitled for grant of temporary status. The respondents say that the applicant had left the work of his own volition. Further they allege that even during the period he was engaged, his work was not satisfactory inasmuch as he was in the habit of absenting himself unauthorisedly from work. However, they have not produced any document to show that the applicant was to put on notice for his deficiencies or unauthorised absence. Nor is there any indication that the applicant had left the work of his own volition.

4. The learned counsel for the applicant has cited various pronouncements of the Hon'ble Supreme Court particularly in 1991(1) SCC Page 28 (Jacob M Puthuparambil & Others Vs. Kerala Water Authority. & Others) in support of his arguments that the respondents could not disengage the applicant after taking work from the applicant on need basis when work of regular nature was

Plu

15

available with the respondents. In this view of the matter the learned counsel for the applicant vehemently argued that the respondents should be directed to regularise the services of the applicant and keep him in their employment on permanent basis for discharging of the work of a regular nature. He also pointed out that the respondents have kept in engagement a person, junior to the applicant, which again showed discrimination and arbitrariness on the part of the respondents. It also meant that respondents needed the services of a person on regular basis.

5. I have considered the matter carefully. In so far as the casual labour is concerned the Supreme Court has held in State of U.P. & Others Vs. Shri Ajay Kumar, JT 1997 (3) SC 219 that daily wage appointments are in contingent establishment in which there cannot exist any post and these appointments can continue only as long as work exists. The Supreme Court had also held in State of U.P. Vs. Kamala Devi, 1996(4) SLR 455 that no enquiry need be held before terminating the ad hoc or temporary employee. In State of U.P. Vs. S.K.Verma & Others, ATJ 1996(1) SC 618 the Apex Court has held that in case of termination from service on account of non-availability of work, no direction can be issued for re-engagement of daily wagers on any other work or existing vacancy. In view of the aforesaid judgments of the Hon'ble Supreme Court, no directions can be given to the respondents to engage the applicant on a regular basis if no work exists with them. As far as the relief sought for by the applicant in terms of the Scheme for conferment of temporary status of regularisation is concerned, it is an admitted position that the applicant's last engagement was in October, 1994 while he has come before the Tribunal only in May, 1996. Therefore the relief if any to be granted to the applicant has also to be moulded in terms of the time frame in which he has approached the Tribunal. There is some dispute as to whether the person cited by the

16

applicant as junior to the applicant, is the same as the one to which the respondents have referred in their counter. I do not consider that it is necessary for the Tribunal to go into the dispute of fact. Therefore, no direction can be given in regard to the preference given to the alleged junior.

6. In the light of the above discussion the OA is disposed of with the following directions:

(A) In case work is available and the respondents need to engage any casual labour, the respondents will also consider the applicant giving him due preference over freshers/outsideers and those with lesser service.

(B) In case the applicant re-engaged respondents will consider his case for grant of temporary status under the Scheme and pass a speaking and reasoned order thereon.

(C) In case the applicant has any grievance thereafter he would be at liberty to approach this Tribunal.

OA is disposed of accordingly. No costs.

Ready
(R.K. AHUJA)
MEMBER(A)

/rao/