

Central Administrative Tribunal
Principal Bench: New Delhi

OA 981 of 1996 decided on 28/5/97

Applicant's Name: Shri Laxman Singh
(By advocate: Shri Gurinder Singh)

Versus

Respondents: Union of India & Ors.

(By advocate: Shri V. K. Mehta)

Corum: Mr N. Sahu, Member (A)

1. To be referred to the Reporter or not? Yes

2. Whether to be circulated to other Benches of the Tribunal? No

Narasingh Sahu
(N. Sahu)

28/5/97

Member (A)

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.981/96

28th
New Delhi this the day of May 1997.

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

Shri Laxman Singh
S/o Shri Risal Singh
R/o House No.3082,
Dharampura, Gandhi Nagar,
Shahdara, Delhi

...Applicant

(By Advocate : Shri Surinder Singh)

Versus

Union of India
through
The Secretary,
Planning Commission,
Yojana Bhawan,
Sansad Marg,
New Delhi - 110 001

...Respondent

(By Advocate : Shri V.K. Mehta)

JUDGEMENT

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

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 to direct the respondents to re-engage the applicant reckoning his service of 240 days for two consecutive years in accordance with the Govt. letter dated 07.06.1988 providing guidelines on regularisation of daily wagers. He also prays for recognition of his seniority over juniors. The impugned order (Annexure A1) is dated 27.02.1996. The respondents informed the applicant that there was only one scheme which is Casual Workers (Grant of Temporary Status and Regularisation) Scheme, Govt. of India, 1993 and this scheme is not applicable to the applicant because he was in service before the scheme came into force. The applicant contests this.

Concurring

2. The brief facts are that the applicant had served the Planning Commission, Parliament Street, New Delhi as a Sweeper on temporary daily-wage basis for 3 years when his services were terminated by verbal orders. He states that he belongs to Schedule Caste. The applicant claims that in the year 1987 he had put in 349 days of service and in the year 1988 he had put in 263 days of service upto September, 1988 when his services were terminated. His grievance is that his juniors who worked with him like; Shri Bir Singh, Mohd. Rafik, Shri Krishan Pal and others were engaged whereas his claim was ignored and his representations were not answered. The respondents state that they have no records to verify the claims of the applicant that he worked as daily wager in their office during 1986, 1987 and 1988. No records of the period were preserved. On the other hand, the applicant had approached them as far back as back as 10.12.1988 by a representation. The representation was not answered as was the fate of subsequent representations. But for the intervention from Prime Minister's office, the impugned letter by way of a reply on 26.02.1996, would not have seen the light of day. The applicant states that he was paid wages for a large number of days in 1988 and 1989 and it should be possible for respondents to verify the payment vouchers and that being a part of the financial record could not have been destroyed.

3. The respondents counsel has cited the decision of the Constitution Bench in S.S. Rathore's case (1989 SCC Vol.IV page 582) and in particular, drew my attention to paragraphs 19, 20, 21 and 22 thereof. He has also cited the decision in the case of Mohinder Singh Jagdev and others 1996(6) SCC 229 in particular Para 7 thereof. This is further buttressed by the decision of the Hon'ble Supreme Court in 1997 SCC (L&S) page 577. The point made by the respondent's counsel

Kansibh

supported by the above decision is that the right to sue had arisen in this case in 1988 when the applicant was thrown out of service. That was the proper time for redressing his grievance. There was no reason as to why he accepted this and sat quietly through all these 8 years. The learned counsel also stated that the applicant had a right of redressal when his juniors were appointed and regularised. The tabulation of the number of days put in by him at pages 10 & 11 of the paper-book (Annexure-A2) is stated to be a self-serving document and has no probative value. These papers are not based on any material.

4. The applicant's counsel states that a casual worker has no rights. He is employed verbally and terminated verbally. He has drawn my attention to page 26 of the counter which deserves to be extracted -

"Subject : Grant of temporary status and regularisation of Casual Workers - formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, Judgement dated 16th Feb.1990 in the case of Shri Raj Kamal & others Vs. UOI.

The guidelines in the matter of recruitment of persons on daily-wage basis in Central Government offices were issued vide this Department's O.M. No.49014/2/86-Estt(C) dated 7.6.88. The policy has further been reviewed in the light of the judgement of the CAT, Principal Bench, New Delhi delivered on 16.2.90 in the writ petition filed by Shri Raj Kamal and others Vs Union of India and it has been decided that while the existing guidelines contained in O.M. dated 7.6.88 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by the scheme as appended.

Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in O.M. dated 7.6.88. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action."

Karan Singh

5. According to the learned counsel the Ministry of Personnel have very much kept in mind the instructions dated 7.6.88. These instructions are at Annexure-A5 (page 14) of the paper-book. The instructions of this circular have followed the judgement of the Supreme Court in Surinder Singh and others versus Union of India. It is clearly stated that persons on daily-wage basis should not be recruited for a work of regular nature. With regard to a direction to review the appointment of casual workers the following guidelines were stated:

"(a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

(b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines are paid emoluments strictly in accordance with the guidelines.

(c) The remaining casual workers not covered by (a) and (b) above are discharged from service."

6. Learned counsel submits that no review was undertaken. There was also a requirement of sending a periodical report on the review which was not done.

7. As no review was undertaken the termination of the applicant was all the more arbitrary.

8. Against this respondents state that in the absence of records it is not possible to say whether any review was taken or not. They only treat the 1993 scheme coming into force from 1.9.93 as the first codified scheme under which regularisation of casual labourers is governed. It is only under this scheme that a seniority list of all casual workers was prepared. Prior to this there did not exist any

17

such list of seniority. Temporary status was granted only to those who qualified within the terms and conditions satisfied under the scheme. This has been done following the orders of the Tribunal in the year 1992 in cases filed by some casual workers and demanding maintenance of a live casual labour register. If the case of the applicant is considered on mere averments it is stated that it would open a floodgate. The respondents also denied the receipt of any individual or collective representation during the period 1887-88. On the basis of seniority and eligibility in terms of scheme of regularisation of casual workers dated 10.9.93 two persons, namely, S/shri Mohd. Rafik and Asha Ram have been regularised. These two persons were regularised under the scheme of 1993. The applicant's claim is stated to be hopelessly time barred. It is further emphasised that the scheme outlined in the O.M. dated 10.9.93 is not an extension of guidelines issued in OM dated 7.6.88. This scheme is for grant of temporary status to casual workers irrespective of availability of regular posts whereas the June, 88 guidelines had a provision of adjustment of eligible workers directly against the regular posts. The two instructions are materially different. The learned counsel repeatedly emphasised that if the claim of the applicant is considered on mere averments it may open a floodgate because similarly placed persons would also clamour for absorption.

9. In my view this case is hopelessly barred by limitation. In the case of S.S.Rathore versus State of Madhya Pradesh AIR 1990 SC 10, a Constitution Bench decided this issue once and for all. The clear enunciation of the law is made by the Supreme Court in paragraphs 20, 21 and 22:

Q

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation."

10. In Secretary, Ministry of Works & Housing, UOI & others Vs. Mohinder Singh Jagdev and others (1996) 6 SCC 229, the Supreme Court had to deal with the case of a temporary employee charged with cheating and forgery for producing false certificates. Besides criminal action, his services were terminated under Rule 5 of the Temporary Service Rules. The criminal proceedings ultimately ended in acquittal. The Supreme Court held that "even in such circumstances,

[Handwritten signature]

the period of limitation to file a suit for declaring the termination order to be unconstitutional commenced on the date of termination of the services and not on the date of acquittal."

11. Keeping in view the above principles, I find that the respondents are right in their claim. Admittedly, the applicant's services were terminated in 1988. He has been making representations. These are not statutory representations. When these were not disposed of, it was open to him to seek proper remedy by approaching CAT at the relevant time, which he has not availed of and, on the contrary, he went on making representations to the authorities. The impugned letter dated 27.2.1996 is addressed by the Under Secretary in Planning Commission to the Deputy Secretary in PMO's office. This is not a letter addressed to the applicant. This is not a disposal of the representation at all. It is an inter-departmental communication. In the first place the cause of action arose in September, 1988. He did not avail the opportunity and simply went on making representations. When his alleged juniors were taken into service he had another cause of action which he also did not avail. The matter has become stale and old. Too much stress was laid on the letter of Department of Personnel & Training dated 7.6.88. The question is if the applicant was aware of regular posts and was aware of his deprivation there was no justification for awaiting the outcome of the representations. O.A. is dismissed on account of limitation.

Narain Sahai
(N. SAHAI) 28/5/97,
Member(A)

/Skant/