

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 138 of 1997

New Delhi, this the 1<sup>st</sup> day of April 1998

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

1. Shri Malkiat Singh, S/o Shri Hakam Singh, Aged about 25 years, R/o -53-B, Rajpur, New Delhi.
2. Shri Ashok Kumar, S/o Shri Prakash Chand, Aged about 22 years, R/o -287-F, Pocket-II, Mayur Vihar, New Delhi.

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-APPLICANTS

(By Advocate Shri A.K. Trivedi)

Versus

1. Union of India, through It's Secretary (Dept of Revenue), North Block, New Delhi.
2. President, Customs Excise & Gold (Control), Appellate Tribunal, West Block-II, R.K.Puram, New Delhi-110066.
3. Registrar, Customs Excise & Gold (Control) Appellate Tribunal, West Block-II, R.K.Puram, New Delhi-110066.

- RESPONDENTS

(By Advocate Shri Madhav Panikar)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The relief claimed in this Original Application is to declare the termination of the services of the applicants with effect from 3.1.1997 as bad in law and also to treat the engagement of persons from open market as arbitrary. It is further prayed that the respondents grant temporary status to the applicants after they completed 206 days. The applicants were engaged from 17.7.1995

till 2.1.1997 with short breaks. They were engaged for doing miscellaneous work of preparing bundles of judicial files, pasting stamps and delivering them in post offices.

2. In the counter reply it is categorically stated that the performance of the applicants was not satisfactory. "They were often not available at the place of their duty and were absconding from work". They were admonished for their default but did not show any improvement. Therefore, they were not continued. Pursuant to the orders of the Tribunal dated 21.1.1997 they were reconsidered for re-engagement on 27.1.1997 along with other candidates sponsored from the Employment Exchange but in view of their earlier performance they were not considered suitable.

3. The grievance of the applicants is that they were not granted temporary status in accordance with the DOPT's Scheme dated 10.9.1993. Admittedly, the applicants have completed 206 days in a period of one year in the office which observed five days' week and, therefore, it is prayed that they are entitled to conferment of temporary status. The applicant's counsel cited the decision of this Court in the case of Veer Pal Singh & others Vs. Union of India, O.A. No. 2137 of 1995 decided on 21.3.1996 by this Court. They also cited the decision of Vishwajyoti Ghosh & others Vs. Union of India and others, 1994(I)ATJ 488. In both these decisions the factual submission is that the applicants have

completed the requisite number of days prescribed by the Scheme and, therefore, they were held eligible for temporary status. The learned counsel at the time of argument submitted that artificial breaks should be condoned and stated that they are to be re-engaged by the respondents in preference to juniors and outsiders.

4. The learned counsel for the respondents vehemently contended that the applicants' performance was never satisfactory. He also stated that as they were not in employment on the date of the promulgation of the Scheme they could not be conferred temporary status.

5. The learned counsel for the applicant contested the claim that the performance was not satisfactory. He submitted that no admonition or warning was issued to the applicants.

6. I have perused the office file produced before me. It is noticed that on a surprise visit on 19.10.1996 on the directions of the Registrar, the Assistant Registrar found after visiting the Bench Registry that six daily wagers were not available on their seats and the files were lying on the floor spread over in a careless manner. Of the six persons at serial nos. 3 and 5 the names of both the applicants in this O.A. are mentioned. The Assistant Registrar further reported that on 29.9.1996 Shri Shyam Singh, Shri Varun Kumar and Shri Ashok Kumar, daily wage workers, were absent

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from their seat. A warning was issued by the Registrar on that date asking the applicants to be careful among others. On 20.11.1996 Shri Malkiat Singh one of the applicants was asked by the Assistant Registrar (Administration) to search the old records from the record room. Shri Malkiat Singh, it is reported, left the office without information instead of locating the records. The Assistant Registrar further noted that on an earlier occasion he left the office without informing him. He was warned by the Registrar that he should improve in his conduct. On 27.1.1997 a Committee of three officers found that in view of their unsatisfactory performance and lack of devotion to duty they were not found suitable for engagement. On this date these two applicants were considered and they were interviewed. The members of the committee awarded marks based on personality test, educational qualification, and knowledge; and selected 16 persons. With regard to the applicants they had recorded a separate note expressing their inability to consider their engagement in view of their past unsatisfactory performance.

7. I have carefully considered the submissions of the learned counsel appearing on both sides. It is no doubt true that both the applicants have worked for considerable number of days and that in the normal course they are entitled to conferment of temporary status. But in the present O.A. the factual situation is different. The basic condition in the case of a casual labourer is his satisfactory

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performance. He is engaged on daily wage basis for doing a specific item of work. He is not entitled to re-engagement if his performance is not satisfactory. The Scheme of the Ministry of Personnel would apply only to casual labourers whose performance is found by the employer to be satisfactory and without blemish. The right of the employer to continue such casual labourer is always predicated upon this important premise. I found that the respondents have repeatedly found the applicants absent from their seats of work and they recorded that they did not acquit themselves properly in doing their work. They were advised and warned. A committee of three members considered their past record while interviewing all others and considered them to be unfit for reengagement. The record placed before me (File No. 3/2/CEGEAT/ 95/ Adm. Part-II) shows that the impressions recorded by the Assistant Registrar and the Registrar were done bonafide in the normal course of discharging their supervisory responsibility. As the benefit of the Scheme would flow only when a casual labourer is found to be fit and devoted in the discharge of his duties and in cases where there was an adverse finding to the effect that the performance was not satisfactory and accordingly their services were terminated, none of the benefits prayed for could ever accrue to them. It is true that conferment of temporary status and re-engagement are not related to each other but such a status is conferred only to invite the applicant for re-engagement in the event work is available. Temporary status is not a

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routine, mechanical grant. Besides the basic pay of the grade & the D.A. certain other benefits and privileges are given. No employer, much less a Government, would consider this grant, if employee is irregular or insubordinate or does not discharge his duties properly. With such an adverse and negative record which the applicants have, the respondents did not think it fit and proper to re-engage them. I do not think the respondents stand calls for any judicial interference.

8. In the result, the Original Application is dismissed. No costs.

*N. Sahu* 1-4-98  
(N. Sahu) Member (Admnv)

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