

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1993 of 1997

New Delhi, this the 13th day of February, 1998

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

Omvir
S/o Shri Sukhvir Sharma
H.No.735, Gulabi Bagh
(Delhi Govt. Flats)
Delhi

...Applicant

(By Advocate : Sh.D.R. Gupta)

Versus

1. Director of Technical Education
Govt. of NCT Delhi
Rouse Avenue
New Delhi - 110 002
2. The Principal
Delhi College of Engineering
Kashmere Gate
Delhi
3. Chief Secretary to the
Govt. of NCT of Delhi
5, Alipur Road
Delhi

...Respondents

(By Advocate : Sh.Bhasker Bhardwaj
proxy for Sh.Arun Bhardwaj)

ORDER (ORAL)

By Sh. N. Sahu, Member(A) -

The prayer in this OA is to quash the oral order of termination w.e.f. 01.06.1997. The applicant was initially appointed on 10.04.1995 and he continued to work till 30.09.1995. Even prior to this during the period from May, 1994 to January, 1995 he worked in a Project in the College of Engineering, Govt. of NCT Delhi. On 08.01.1996, he was engaged on a daily-rated basis for period of 89 days each with notional breaks and continued till 30.05.1997. Thereafter his services were terminated. Learned counsel for the applicant contends that in Niadar &

2. After notice, the respondents submit that

Sh: Satya Narayan Sharma

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Anr. Vs. Delhi Administration & Anr. - (1992)21 AIC

398. the Hon'ble Supreme Court directed the Govt. of NCT Delhi Administration to prepare a Scheme for absorbing casual labourers working for one year or more and till such time the minimum salary payable to regular employees in Group 'D' posts was directed to be paid to Casual Labourers. The applicant states that he is covered by the Scheme thus prepared and fulfils the eligibility conditions laid-down for appointment to such posts. His grievance is that his junior Sh. Satya Narayan Sharma was retained whereas his services were terminated. Learned counsel next contends that his case is covered and comes within the Scheme framed by the Delhi Administration because he continuously worked for more than a year and is otherwise liable for regularisation. He states that a number of vacancies in Group 'D' are available and, before termination his claim for regularisation should have been considered. He further states that in the circumstances of the case he should also be considered for temporary status in accordance with the OM dated 10.09.1993 issued by the Deptt. of Personnel & Training. His representation in this regard has not been attended to.

2. After notice, the respondents submit that Sh. Satya Narayan Sharma was engaged only for a period of 89 days on contractual basis for a specific period w.e.f. 30.05.1997 and on the completion of this spell of engagement, his services were also terminated. It is next stated that during 1995 the

applicant was engaged for a Project related work in January, 1996. The attendance records only short spells of 89 days. The applicant was not engaged against a regular vacancy borne on the establishment. His engagement was on daily-wages and his name was not ~~by~~ sponsored by the Employment Exchange. Respondents, therefore, contend that he does not have any claim for regularisation because his services were for a specific period and on the expiry of the said period, his services were terminated. Learned counsel for the applicant urges that a number of persons similarly situated were regularised in accordance with the Scheme framed following the directions of the Supreme court in Niadar's case (supra). A direction was given in a number of other cases also to regularise all those who have completed the prescribed period of 240 days against the existing vacancies in order of their seniority. For this purpose the learned counsel relies on the decision of Supreme Court in Union of India Vs. Dharampal & Ors. - 1996(2) SCSLJ 40. Although, the applicant was engaged in respect of a particular Project on a contract basis even so after the completion of the Project the applicant was liable to be transferred to any other Project where work is available and for this purpose he relies on the decision of the Apex Court in Central Welfare Board & Ors. Vs. Anjali Bepari & Ors. - 1996(2) SCSLJ 316. It is reiterated that there are vacancies in Group 'D' posts against which the applicant could be considered for regularisation in accordance with the Scheme which was formulated under Niadar's case(supra).

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3. I have carefully considered the submissions. The admitted facts are that the applicant worked both in 1995 as well as in 1996. The Hon'ble Supreme Court in Anjali Bepari's case (supra.) held as under:

"3. Calling this order in question, this SLP has been filed. It is not in dispute that the project is being wound up in a phased manner and the services of the employees are being dispensed accordingly. It is stated by the learned counsel for the petitioners that no junior to the respondent was allowed to continue in the said project. It is stated that there are other projects being operated similarly, but the persons engaged therein also are continuing on temporary basis and are senior to the respondent. Therefore, she cannot be regularised in any other scheme. In view of the above stand, we direct the petitioners to continue the respondent in any other temporary scheme but keeping in mind the overall seniority of all the persons; the dispensing with the services should be on last-come-first-go basis i.e. the junior most incumbent has to go out first. As and when vacancies would arise, such persons whose services have been dispensed with will be taken back without following the practice of requisitioning the names of candidates from the employment exchange. They would be regularised only when regular posts are available and in accordance with the order of seniority."

A seniority list of all those casual labourers similiary situated like the applicant should be maintained. The applicant's position therein should be formally established. If there is a vacancy available the applicant shall be considered for that vacancy if no other senior is available for consideration. If no vacancy is available now, the respondents shall whenever a vacancy arises consider the claim of the applicant initially for engagement

and eventually for regularisation in his turn giving him preference to juniors and outsiders. They should remember that "first come last go" is a principle that has become the law of the land whenever the engagement or termination of the services of the Casual Labourers are considered provided that the performance of the casual labourer is otherwise satisfactory.

4. In the case of Excise Superintendent Malkapatnam Vs. K.B.N. Visweshwara Rao & Ors - JT 1996(9) SC 638, the Hon'ble Supreme Court held as under:

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins; and then consider the cases of all the candidates who have applied. If this

procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates. (Para 6)"

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After this decision any rule or condition laying down that sponsoring from the Employment Exchange is a condition preceded ~~ed~~ ^{by} continuance or regularisation is not legally correct.

5. In view of the above discussion the following orders are issued:

- (i) The applicant claims that salary for the month of April, 1997 and May, 1997 was not paid to him. This should be verified and if he has worked for this period, this salary shall be remitted to him within a period of four weeks from the date of receipt of a copy of this order.
- (ii) With regard to relief No.8.2 claimed, the respondents are directed not to appoint any fresh person as a casual labourer or as a Group 'D' employee without considering the claim of such appointment on preferential basis, provided the applicant fulfills the criteria laid-down by the respondents in the Scheme prepared pursuant to the directions of the Supreme Court in Niyadar's case (supra.).
- (iii) The respondents are directed to consider engaging the applicant if a vacancy is available in accordance with his seniority and if a vacancy is not available they should consider his case in the next available vacancy in preference to juniors and outsiders.

6. OA is ~~dismissed~~ ^{allowed}. No costs.

/Kant/

(N. Sahu)
Member (A)