

20

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.224/1997

New Delhi, this **13th** day of October, 1998

Hon'ble Shri S.P. Biswas, Member(A)

Shri Mohsin Ali
C-1/35, Pandara Park
New Delhi-110 003

Applicant

(By Shri K.B.S. Raian, Advocate)

versus

Union of India, through

1. Secretary
Department of Company Affairs
Shastri Bhavan, New Delhi

2. Secretary
MRTP Commission
Shahjahan Road, New Delhi

Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

The applicant, a casual labourer, is aggrieved by Annexure-1 order 20.8.96 by which the Secretary, MRTPC has been asked to disengage the services of the applicant alongwith two other casual labourers. The said two casual labourers who were to be disengaged are still continuing under the orders of this Tribunal dated 4.10.96 in OA 2003/96. Consequently, the applicant is before this Tribunal seeking reliefs in that the relevant files be called to (i) see if the respondents have adhered to the scheme of welfare before adopting such a negative attitude in his case; (ii) determine if the respondent No.1 has resorted to discrimination against the applicant vis-a-vis other two, similarly placed employees working under the respondents; and (iii) declare the applicant as entitled to temporary status.

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21

2. Shri K.B.S. Rajan, learned counsel for the applicant argued strenuously to say that the applicant had worked for 345 days from 14.2.95 to 31.1.96. On the strength of this, the applicant will be entitled for temporary status as per Government of India Scheme dated 10.9.93. He would also submit that disengagement of the applicant was stated to be on account of Department of Company Affairs not having given its permission for retention of the applicant in the job. But, at the same time, two other employees, similarly placed like the applicant herein, are understood to be continuing with the respondents as casual labourers. Respondents have, therefore, resorted to the practice of hostile discrimination in keeping the applicant out of job vis-a-vis others.

3. Learned counsel further contended that having worked for 384 days in 14 months, applicant has a right to be considered for temporary status as per the present Scheme in operation and it is only on the basis of the same that R-2 had approached R-1 for according necessary approval for continuing the applicant further as casual labourer. The other two casual labourers continue in job when the impugned order was passed in the case of the applicant and since the other two employees were allowed to continue on the basis of an interim order, the applicant could also be allowed to get covered under the same order.

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4. The counsel again urged that with the joining of the duties by the new Hon'ble Chairman/ MRTTP Commission, requirement of an Attendant and other Group-D employees definitely exists and R-2 is apparently wrong in adopting a negative approach that there is no requirement of casual labourers for the organisation. In any case, applicant has an edge over others because he is senior to others by virtue of his having already served the department for 385 days, the provision under the scheme that allows temporary status.

5. Respondents, on the contrary, have opposed the claim on the basis that the applicant's case is covered neither in terms of the Scheme of DOPT's OM dated 7.6.88 nor of subsequent Scheme dated 10.9.93. Details of both the Schemes have been incorporated in the counter. As per these provisions, applicant has no case either for re-engagement or for grant of temporary status/regularisation. Respondents have further contended that applicant had worked with R-2 from 14.2.95 to 1.3.96 but was not on the roll of respondents on the date of issue of DoPT's OM dated 10.9.93 as at Annexure-2 and as such is not entitled to the benefit of temporary status. They have further contended that services of the applicant were discontinued as there was not sufficient work to be attended to by any daily wage worker. Applicant was appointed as a daily wager as and when additional work was to be undertaken by such employees.

93

6. As there were some contradictions in the submissions of the counsel for both parties, we called for the records and perused them thoroughly. It is seen that the acting Chairman, MRTPC Commission had appointed the applicant herein as daily wage worker at his residence from 14.2.95. This was done to enable the Hon'ble Chairman to receive number of dignitaries, Members of Bar and public at his residence and since it was in connection with the discharge of his official functions that the services of an attendant was considered indispensable. The matter was taken up with R-1 i.e. Department of Company Affairs (Government of India) on as many as three occasions. After protracted correspondences between the two, i.e. R-2 and R-1, the latter ultimately informed R-2 on 8.3.96 that the "services of Shri Mohsin Ali may be discontinued with immediate effect. You may, however, consider redeployment of existing Group D staff, in MRTPC for the requirement of acting Chairman".

7. I find that engagement of the applicant as a casual labourer was in disregard of the provisions under the Scheme dated 10.9.93. This is because after the appointment the applicant was required to do the work of regular nature and that could not be allowed by means of appointing the applicant as casual labourer. This is because the DOPT's Scheme stipulates that "persons on daily wages should not recruited for work of regular nature".

93

24

8. As regards daily wagers, law is well settled that daily wage appointment is in relation to contingent establishment in which there cannot exist any post and which continues so long as work exists. Under these circumstances, it would be wrong on the part of the Tribunal to issue any direction that the applicant should be reengaged or offered temporary status (see State of U.P. & Ors. Vs. Ajay Kumar JT 1997(3) SC 219). Respondents have not engaged any fresh hands after January 1996 and the two employees named are continuing only because of our interim orders.

9. Scrutiny of the records reveal that the respondents processed the applicant's case only for ex-post-facto approval of engagement from the Ministry (Respondent No.1) and did not examine applicant's plea for conferment of temporary status. We also find that the applicant has not even exhausted the alternative remedies available at the executive level. Since the issue on conferment of temporary status itself has not been considered, it would only appropriate for the respondents to do so in the background of the factual position that the applicant had worked for more than 240 days between February 1995 to January 1996. The fact that he had worked for more than 240 days has not been disputed by the respondents.

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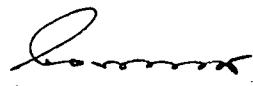
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10. Under the circumstances aforesaid, I find that the orders of this Tribunal in OA 2129/96 decided on 25.2.97 will be squarely applicable in respect of the applicant's claim for conferment of temporary status. This is because the Scheme applicable is that of 1993 and it is not the case of the respondents that there is a subsequent Scheme which supercedes the earlier Scheme of 1993 and could be made applicable in the case of the applicant since he was appointed after 1993-Scheme was introduced. Since the applicant has completed the requisite period of engagement as casual labourer under the Scheme after 1.9.93, he would be eligible for declaration of temporary status.

11. The application is partly allowed with the following orders:

- (i) Respondents shall offer the applicant benefits of temporary status under the Scheme since he ~~fulfills~~ ^{fulfills} the required number of working days for the said purpose;
- (ii) Applicant's re-engagement, however, will be strictly in terms of his seniority amongst similarly placed persons and if jobs are available.

12. With the abovesaid directions, the application is disposed of. There is no order as to costs.


(S. P. Biswas)
Member (A)

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