

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 501/1997
T.A. No.

199

(15)

DATE OF DECISION 13.2.1998

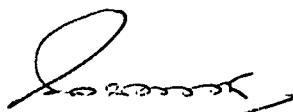
<u>Shri Bijinder Singh</u>	<u>Petitioner</u>
<u>Shri Rishi Kash</u>	<u>Advocate for the Petitioner(s)</u>
<u>Versus</u>	
<u>UOI & Ors.</u>	<u>Respondent</u>
<u>Shri V. P. Uppal</u>	<u>Advocate for the Respondent(s)</u>

CORAM

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

The Hon'ble Mr.

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?


(S. P. Biswas)
Member (A)

Cases referred:

- 1 Durga Prasad & Ors. Vs. UOI 1990 (13) ATC 567
- 2 Municipal Committee Vs. State of Punjab 1971 (2) SLR 420
- 3 Excise Supdt. Malkapatham, Krishna Dt. Vs. K. B. N. Vishwashwara Rao JT 1996 (9) 638
- 4 Chandigarh Admin. Vs. Jagjit Singh 1995 (1) SCC 845.

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 501/1997

New Delhi, this 13th day of February, 1998

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

Shri Bijinder Singh
73, Village Safiabad
PO Nathupur, Dt. Sonipet, Haryana .. Applicant

(By Advocate Shri Rishi Kesh)

versus

Union of India, through

1. Secretary
Ministry of Finance
New Delhi
2. Director General
Income Tax(Spl.) North
Mayur Vihar, New Delhi
3. Director of Income Tax
Con. Place, New Delhi .. Respondents

(By Advocate Shri V.P. Uppal)

ORDER(oral)

The factual matrix giving rise to the filing of this OA is as hereunder.

2. The applicant had earlier approached this Tribunal in an OA No.1640/95 which was decided by an order dated 4.10.96. Pleas taken in that OA related to regularisation, offer of temporary status and claim of being re-engaged on the basis of seniority. The decision in that OA crucial for the purpose of determination of this OA is reproduced below:

"The applicant presently stands disengaged. Subject to the availability of work, the respondents should consider re-engaging the applicants as casual labourers in preference to outsiders and those with overall lesser length of past service, and in case no suitable candidate sponsored by the Employment Exchange is available at the time of such consideration. Once the applicants are re-engaged, the respondents will examine

the claims of the applicants for grant of temporary status in accordance with the provisions of the casual labours scheme and pass a speaking order thereon in the case of each of the applicants under intimation to them. Thereafter, subject to the availability of regular vacancies and the applicants being fully eligible, the respondents will examine the claims of the applicants for regularisation".

(17)

3. The questions that fall for determination are:

- (i) whether there has been a violation of the orders of the Tribunal in respect of re-engagement of the applicant and engagement of outsiders/freshers/juniors to the detriment of the applicant's interest after October, 1996?;
- (ii) whether the process of selection resorted to by the respondents in January, 1997 was made only for engagement of fresh casual labours or for filling up of regular posts?;
- (iii) whether the applicant is entitled to raise the issue at this stage when apparently these were adjudicated in an earlier OA filed by him?; and
- (iv) whether the respondents can legally insist upon sponsoring of casual labour through Employment Exchange before considering him/her for regularisation?

4. It is not in dispute that the applicant had worked earlier as a casual labour with the respondents from 1993 to 1995 with breaks and was disengaged on account of there being no work. Interpreting the phrase "once the applicants are re-engaged the respondents will examine the claims of the applicants for grant of temporary status" in the order, the counsel for applicant argued that respondents have evidently failed not only to re-engage but also to consider/examine the genuine claim of the applicant in terms of Tribunal's order aforesaid. This is particularly so when they have now regularised the service of one Shri Ram Kumar who is admittedly junior to the applicant. He would further contend that the respondents have throughout

misrepresented that no appointment of casual worker can be made other than through Employment Exchange. This plea is against law as enumerated in Section 4 of Employment Exchange Act which does not apply to Sweeper/Safair Karmacharis, Peon and employees doing unskilled work as held in the case of Municipal Committee Vs. State of Punjab 1971(2) SLR 420.

(18)

5. The applicant has now approached this Tribunal on the basis of plea that the principle of "First to come, last to go" has not been adhered to, work of regular nature continues and that the need for getting re-engaged with sponsoring of the applicant's candidature through Employment Exchange cannot be insisted upon and that representation of the applicant at Annexure B has not yet been disposed of. Learned counsel heavily relied on the decision of the Tribunal in the case of Durga Prasad & Ors. Vs. UOI 1990 (13) ATC 567. In that order, it was held that the conditionality of having sponsored by Employment Exchange is not to be insisted upon.

6. In the counter, respondents have denied the claim. The basic contention of the respondents is that this OA is hit by principles of resjudicata. Applicant's claim that fresh casual labours have been appointed is untenable because none in the category of casual labour or safaiwala has been appointed after 4.10.96 nor is the applicant's claim for being considered alongwith those mentioned in Annexure E is sustainable. This is because Annexure E relates to appointment of Group D category against regular vacancies.

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6. Heard the learned counsel for both the parties and perused the records. I shall now proceed to examine the issue involved in seriatim.

(19)

Tribunal's order dated 4.10.96 did not stipulate straitaway re-engagement of the applicant herein. Respondents were duly directed to "consider re-engagement of applicant as casual labour in preference to outsiders and those with overall lesser length of past service". After 4.10.96, respondents have not made any appointment of casual labour. Neither there is any vacant post available in the category of safaiwala or casual labour nor any interview has been conducted for engagement of such people. It is obvious that the applicant has misunderstood the order of the Tribunal dated 4.10.96.

7. Respondents would also submit that the applicant has been misguided as regards entry of fresh hands at any level ignoring the alleged superior claim of the applicant. The interview mentioned in the submission of the applicant relates to exercises undertaken by the respondents in January, 1997 to fill up five regular group D posts and that too in terms of existing Recruitment Rules. Shri Ram Kumar's case is included in these five and his name has been duly sponsored by the Employment Exchange. This takes us to the 3rd issue.

8. Placing reliance on the decision of Durga Prasad's case (supra), applicant has contended that casual workers who have worked for 2 to four years shall be considered for regularisation of their services irrespective of whether their names have been sponsored

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by Employment Exchange or not. I find respondents have earlier (in OA 1640/95) taken the stand of applicants not coming through Employment Exchange and the relief claimed in that OA vis-a-vis the present OA is almost identical i.e. regularisation of the applicant's services by condoning the breaks. It was only appropriate for the applicant to challenge effectively the necessity of getting sponsored through Employment Exchange at that stage. The Tribunal therefore in the second round is not required to examine its earlier finding. Under the principles of res judicata, finding already arrived at by the Tribunal in an earlier round cannot be reopened in the second round (emphasis added). Neither the respondents could be held responsible for ignoring the directions of the Apex Court in the case of Excise Supdt. Malkapatham, Krishna Dt. Vs. K.B.N. Viswashwara Rao JT 1996(9) 638 wherein their Lordships stipulated that

"the appropriate department or undertaking or establishment should call for names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, TV and employment news bulletin and then consider the cases of all the candidates who have applied. If this procedure is adopted, fairplay would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates".

9. In the case before us, the issue involved is regularisation and not fresh appointment in the category of casual labour or safaiwala. What is agitated in this OA filed in March, 1997 is the respondents' action in regularising the services of Shri Ram Kumar in January, 1997. Shri Ram Kumar was admittedly junior to the applicant in terms of initial engagement as casual labour. Applicant challenged the issue on his

disengagement from casual service with effect from 1.8.95 on grounds of "First to come last to go" through previous OA (1640/95) but without any material success. It is regularisation of his erstwhile junior in early 1997 that woke him from the slumber. Thus, what the applicant failed to achieve directly, he seeks to achieve the same indirectly through the present OA. It is impremissible in the eyes of law (emphasis added).

(21)

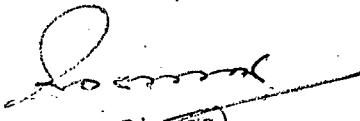
10. I find the above reliance in Durga Das's case is also wrongly placed. That was the case where the applicant worked in Group D post from 1984 to 1988 on temporary basis. Applicant herein did not get temporary status. Applicant in Durga Das's case also got the benefit of one time relaxation granted through DoPT's OM dated 7.5.85 in respect of regularisation of the service of casual labour even if they were not recommended through Employment Exchange. Applicant's case herein stands on a different footing.

11. Coming to the issue of sponsorship by Employment Exchange, it is found that Government of India OM No.49094/88/84 dated 7.5.85 has stipulated several conditions for regularisation of casual labours. One such condition is that "casual worker concerned should have come through Employment Exchange". On the basis of this condition of 1985, applicant's claim for regularisation cannot be sustained in terms of law. These instruction of the Government of India have subsequently been reiterated in OM dated 12.4.94. In any case, applicant cannot be allowed to reagitate this

issue now since this very item had come up for examination by the Tribunal in OA 1640/95, Para 2 thereof is relevant in this connection. (22)

12. If the conditionality of coming through Employment Exchange is considered illegal, it was open to the applicant to challenge the vires of the DoPT's OMs referred to above. Applicant decided to remain silent on this issue earlier and he does not challenge them even now. He therefore cannot acquiesce in a wrong and make a gain from that by comparison. Without challenging the wrong (two OMs concerned) one cannot claim remedy from wrong. Such collateral reliefs are alien to law (emphasis added). Direct support of such a view is available in the judgement of Hon'ble Supreme Court in the case of Chandigarh Admn. Vs. Jagjit Singh 1995(1) SCC 745.

13. In the aforesaid circumstances, it is not a fit case for the Tribunal to exercise its discretionary jurisdiction under Article 226 of the Constitution, interfere in the matter and offer reliefs on the basis of questionable records/evidence. The application is dismissed being devoid of merits. However, our orders shall not stand in the way of the respondents to reconsider, if they so desire, the case of the applicant for re-engagement as casual labour in ^{terms} of rules. There shall be no order as to costs.


(S.P. Biswas)
Member(A)

/gtv/