

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 199
T.A. No. 887/1997

199

DECISION

DATE OF DECISION

19.11.1997

Rajendra Kumar

Petitioner

Shri T.C. Aggarwal

Advocate for the Petitioner(s)

Versus

D.G. DAVE & ORS.

Respondent

Shri R.V. Sinha

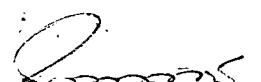
Advocate for the Respondent(s)

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)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.887/1997

New Delhi, this 19th day of November, 1997

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

Shri Rajendra Kumar
802/7, Gali No.16
Vijay Marg, Shahdara
Delhi-53

.. Applicant

(By Shri T.C. Aggarwal, Advocate

versus

1. Director General
Dte. of Advertising & Visual Publicity
PTI Building, Parliament Street
New Delhi
2. Shri S. Ganguly
3. Shri Bhola Nath
4. Shri K.P. Singh
5. Shri K.C. Sarjana
All c/o DAVP, New Delhi .. Respondents

(Shri R.V. Sinha, Advocate)

ORDER

The applicant is aggrieved by the action of the respondents in disengaging him from the service of casual labourer in early 1995.

2. The background facts of the case, in a nutshell, is as under. The applicant had approached this Tribunal earlier through OA 993/95 when allegedly his juniors were retained ignoring his superior claims. The said OA was disposed of with a direction to the respondents to verify the claim and grant the applicant temporary/ if found fulfilling the conditions and also put him at the appropriate place in the list of casual labourers. Since the respondents did not come up with any response whatsoever, a contempt petition No.271/96 was filed. This was dismissed with a direction that the department will examine the details of the petitioner's services and inform him of the position and prospects in the waiting

list within a period of six weeks. This also did not evoke timely response from the respondents resulting in filing of yet another contempt petition No.32/97. This was dismissed since at that particular time the petitioner was found working and the respondents submitted that the applicant will continue to be engaged as per rules. The applicant, however, continued working for a shortwhile apparently following the direction of the Tribunal. Since the petitioner was given the liberty to agitate the issue in respect of his original claim for grant of temporary status, he is before us in the fourth round with the present OA claiming the following reliefs:

(i) That his termination/subsequent disengagement from casual work with effect from 7.5.95 be declared illegal;

(ii) That the respondents be directed to re-engage him as per the seniority of 1991 and be declared as having obtained temporary status with effect from 1.10.93.

3. The learned counsel for the applicant sought to establish the claim on the basis that the applicant had worked for 206 days both in the year 1991 and 1993 and was eligible for grant of temporary status as per the Scheme dated 1.10.93 introduced by the respondents. The counsel would further argue that the respondents, as per the order of the Tribunal, could not have denied review of the applicant's earlier experience and initiate appropriate follow up actions to grant him temporary

(3)

status. Respondents have failed to initiate appropriate action to grant him temporary status. Respondents have also violated the law laid down on the subject inasmuch as some freshers/juniors have been engaged in the interim period ignoring the applicant's claim. (X)

4. To add strength to his claim, the learned counsel has cited the following decisions. In the case of Jarnail Singh Vs. GM. Northern Railway 1985(2) ATJ 36 this Tribunal held that it is for the respondents to produce necessary documents namely pay bills and vouchers while denying reasonable opportunity. It was held that failure of the respondents to produce the pay bills and vouchers to verify the genuineness of earlier working as a casual labour amounts to denial of opportunity under Article 311 of the Constitution, the counsel would argue.

5. The case of P.I.Joseph & P.C.Antony Vs. SDO, Telephones, 1989(10)ATC 42 was cited to assert that it would be too much for the Tribunal to expect casual labourers to keep any evidence of details of their early employment. The applicant has also cited the decision of the Apex Court in the case of Ghaziabad Development Authority Vs. Vikram Chaudhary, JT 1995(5) SC 536 to highlight the illegality in dispensing with the services of senior casual labourers and appoint freshers/juniors. It has also been submitted that in such circumstances pre-emptive period should count notionally as on duty/service as has been laid down in the decision of this Tribunal in the case of K. Thyagaraj Vs. UOI 1992(1)SLJ CAT 97. In yet another decision of this Tribunal in the case of K.

X

Soundararajan Vs. UOI & 4 Ors. 1991 (1) CAT 303 it has been held that discharging senior by retaining junior is a discrimination and that when vacancies are available, artificial break and termination are arbitrary actions. The termination of the applicant on 7.5.95 without there being any notice is itself against the provisions laid down in the Scheme. To add insult to the injury, respondents have compounded their illegality by engaging even freshers, the counsel contended.

6. In the counter, respondents have submitted that the details of the applicant's working period have been examined with reference to the judgement of the Tribunal dated 7.3.96 and that it has been found that the applicant has not been engaged for 206 days in any calendar year and is, therefore, not eligible for grant of temporary status.

7. This is surprisingly one such case where the respondents have been found maintaining evidently an inconsistent stand despite several opportunities having been given to them.

8. In para 4.3 of the reply, it has been submitted that "the applicant's claim for temporary status was also verified but not found eligible", whereas in para 4.4 in Annexure R-I it has been mentioned that "as regards records are concerned, this is humanly impossible to verify these". From the materials placed before the Tribunal, it is seen that the applicant has been working in different sections of DAVP, i.e. Administration, Advertising & Visual Publicity and Exhibition wings and it is apparently for this reason

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that the applicant has ^{met} made the concerned officers under whom he had worked for different spells as respondents (R-2 to R-5) in the array of parties. Of the four respondents, only R-2 has replied whereas details from other sections are not available. R-2 has categorically stated that the details in Annexure A-3 given by the applicant are correct subject to the fact that the applicant had worked for 20 days in April, 1991 instead of 25 days as claimed. In other words, the fact that the applicant had worked for 206 days in 1991 gets established. To this, Respondent No.1 would only submit that the applicant has not worked for 206 days but has not come out with the exact details as regards the number of days applicant had actually worked. It is evident that the respondents have not even cared to verify the details, from different sections, though directed by the Tribunal.

9. That apart, respondents have now submitted that the applicant's name has been included in the list of live casual labourers. When we wanted to know the rationale of having entered the applicant's name in the panel of casual labourers, the learned counsel for the respondents could not come with a satisfactory reply. This is because the names of casual labourers can be put at the appropriate place and that too when the details of an employee's working period is known as otherwise his name cannot be put at a correct Sl.No. vis-a-vis others. To say that the applicant's name has been included in the live casual labourer register and also to say that the records could not be verified is an act of indisputable contradiction. Respondents have even

gone to the extent of saying that the case of the applicant is open to review. Such a stand cannot be countenanced in the eyes of law.

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10. Applicant's counsel took the plea of a few freshers having been appointed ignoring the superior claim of the applicant herein. Names of Naresh Kumar, Kali Chand, Uday Vir, Gian Singh, Sunil Kumar and Raghunath were mentioned as examples of people having been engaged on 1.5.97 reported to be still continuing. Though as many as seven opportunities were given since 14.8.97, learned counsel for respondents drew a blank on 4.11.97 when he again sought time to verify the written statement. The applicant claims working upto 7.5.95 which would mean that he was in service when the present scheme of the casual labourers came to be operative from 1.10.93. This was also not controverted by respondents during the course of pleadings on 4.11.97.

11. In the background of the details aforementioned and respondents' failure to come up with verified details as directed by this Tribunal, I am left with no alternative but to conclude that the applicant had worked for more than 206 days particularly in 1991. This position gets well supported by the submission of R-2 as at Annexure R-1. Authority is legion to indicate that where the casual labourers had worked for more than 240/206 days in a year, he/she ought to have been given temporary status and termination has to be on the basis of rule/provisions under the scheme.

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12. I also find that in a very recent decision on 8.10.97 of this Tribunal in OA 740/97, the Department of Personnel was directed to issue suitable clarification as regards offering of benefits of temporary status with reference to the scheme of 1993. The said clarification was made available on 26.2.97 when the Department of Personnel confirmed that temporary status would be conferred to all those casual labourers who were recruited on the date of issue of OM, namely 10.9.93 and had put in atleast one year of continuous service.

13. In the background of circumstances aforementioned, the applicant's claim deserves to be considered on merits. The application is allowed with the following directions:

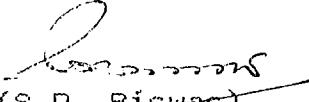
(i) The applicant shall be deemed to have continued as casual labourer from the date of his termination since 7.5.95 till the date of his re-engagement ignoring the break. He will, however, be not entitled to claim back wages.

(ii) If there is a vacancy at present in any wing of the DAVP, the applicant shall be considered for re-engagement treating him to have obtained temporary status with effect from 1.10.93. In other words, he will have seniority as casual labourer over others engaged after 1.10.93.

u/p

(iii) If there is no casual job or vacancy existing at present, the applicant's claim for re-engagement shall be considered against future vacancies keeping in view his earlier experience and according to his seniority vis-a-vis others.

(iv) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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