

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2128/94

(3)

NEW DELHI THIS THE 2ND DAY OF FEBRUARY, 1995.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Sunil Kumar
S/o Shri Kunwar Pal
R/o -C-16/-B, Siddharath Basti
P.O.Jangpura,
New Delhi-110014. . .

APPLICANT

BY ADVOCATE SHRI O.P.KHOKHA

vs.

Union of India through
the Additional Secretary
Ministry of Personnel, Public Grievances
& Pension,
Department of Administrative Reforms
and Public Grievances
Sardar Patel Bhavan
Parliament Street
New Delhi-110 001. . .

RESPONDENTS

BY SENIOR ADVOCATE SHRI P.H.RAMCHANDANI.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The relief, in substance, claimed by the applicant is that the respondents may be directed to regularise his services as a Group 'D' employee.

2. A counter-affidavit has been filed on behalf of the respondents. We have heard Shri P.H.Ramchandani, Sr.Counsel, appearing on behalf of the respondents and Shri O.P. Khokha, counsel, appearing on behalf of the applicant.

3. The sheet-anchor of the applicant's case is the Office Memorandum dated 10.9.1993 whereby the Department of Personnel and Training formulated a scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India, 1993." According to the applicant, he is entitled under that scheme to be given a temporary status and thereafter to be considered for

regularisation in service.

4. In the counter-affidavit filed on behalf of the respondents, in para 4.2, it is admitted that the applicant rendered service to the respondents from 1.4.1993 to 9.9.1993 for 128 days, and from 10.9.1993 to 31.12.1993 for 103 days. That makes a total of 231 days. It is also admitted that between the months of January 1994 to September, 1994, the applicant rendered service for 230 days.

5. For attracting the scheme aforementioned, two conditions appear to be necessary. The first is that the casual worker concerned should be currently employed on the date of the scheme. We may note, at this stage, that the scheme had been brought into force with effect from 1.9.1993. This condition has been undoubtedly satisfied by the applicant, according to the respondents' case. The other requirement appears to be that the casual worker concerned should complete either 240 days or 206 days, as the case may be. Shri P.H.Ramchandani, Sr.Counsel, has contended that the second requirement does not stand fulfilled in the instant case as the requirement of the scheme is that a casual worker should not only be currently employed on 1.9.1993 but he should have also completed 240 days' or 206 days' service, as the case may be, on or before the said date. Prima facie, his contention appears to be untenable. However, we need not examine this question further because Shri P.H. Ramchandani has been fair enough to make a statement at the Bar that ~~inspite~~ of the

scheme aforementioned, an earlier scheme of the year 1984 too continues to operate.

6. It appears to be the common case of the parties that even under the scheme of 1984, the applicant is entitled to be considered for regularisation of his services, as admittedly according to the averments made in the counter-affidavit, he rendered service for more than 206 days each in two consecutive years. It is also admitted at the Bar that the respondents observe five days' week. We, therefore, come to the conclusion that, in any view of the matter, the applicant is entitled to be considered for regularisation of his services under the scheme of 1984.

7. In para 4.8 of the OA, it is stated that the job on which the applicant was employed still continues and the respondents are resorting to fill the said assignment through freshers being called from Employment Exchange. The reply of the respondents to this para is: "It is submitted that temporary status cannot be granted to Shri Sunil Kumar as he does not fulfil the conditions laid down in the Scheme for grant of temporary status." This is wholly unsatisfactory method of giving a reply to the contents of para 4.8. We, therefore, take it that there is no denial of the assertion that there is still a vacancy. Having recorded that finding, we may now consider whether a direction can be issued to the respondents to regularise the services of the applicant in accordance with the scheme of 1984.

8. We have already demonstrated above that according to the respondents' own case, the Office Memorandum of 1984 survives even now and furthermore, according to their own case, the applicant fulfills the requirements of the Office Memorandum of 1984 in so far as he has rendered them service for 206 days each in two consecutive years. There is a vacancy. We, therefore, direct the respondents to regularise the services of the applicant in the said vacancy. This shall be done within a period of two months from today. The applicant need not communicate this order to the respondents as the same is being passed in the presence of their counsel and also an officer of the respondents. However, we make it clear that the direction given by us does not fetter the discretion of the authority concerned to examine the eligibility of the applicant with respect to matters other than the fulfilment of the requirements of the Office Memorandum of 1984. We have no doubt that the respondents shall deal fairly with the applicant while considering his case for regularisation in service.

9. With these directions, this OA is disposed of finally but without any order as to costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)

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(S.K.DHAON)
VICE-CHAIRMAN(J)

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