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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-708/94

New Delhi this the 3rd Day of January, 1995.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J)
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Shri Padam Singh,
S/o Shri Kanhaya Lal,
C/o Sh. Sant Lal, advocate,
C-21(B), New Multan Nagar,
Delhi-56.

Applicant

(through Sh. Sant Lal, advocate)

versus

1. The Union of India,
through the Secretary,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi-1.
2. The Senior Supdt. Delhi
Sorting Division,
R.M.S. Bhawan, Kashmeri Gate,
Delhi-6.
3. The Head Record Officer Delhi
Sorting Division,
R.M.S. Bhawan, Kashmeri Gate,
Delhi-6.

Respondents

(through Sh. M.K. Gupta, advocate)

ORDER(ORAL)

delivered by Hon'ble Mr. Justice S.K. Dhaon, V.C. (J)

Admit.

Material averments in the O.A. are these.

The applicant was employed as a part-time sweeper in Delhi R.M.S. under Delhi Sorting Division w.e.f. 5.5.1984. He worked in that capacity for five years upto January, 1989. In February, 1989 he was engaged as a casual labourer (Mailman) in Delhi R.M.S. as full time on 8 hours duty on daily wage basis. He has rendered more than five years service as a casual labourer (Mailman) besides his service of about five years as a part-time employee. He has rendered

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service for more than 240 days not only in one year as envisaged in the Scheme of Temporary Status but during the period of four years. He was entitled to the temporary status in accordance with the relevant Scheme.

A counter-affidavit has been filed on behalf of the respondents. Therein the material averments are these. The applicant was engaged as a part-time safaiwala as per verbal orders dated 5.5.1984. He continued to work in that capacity till the termination of his service.

The relevant Scheme as applicable to R.M.S. is before us in the form of Annexure A-3 to the O.A. This Scheme was enforced on 12.4.1991 and was published as Temporary Status to Casual Labour (Postal) Scheme. Paragraph-1 of the Scheme is relevant and the same is extracted below:-

"Temporary Status would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of atleast one year. During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days weeks)."

As already indicated, in the counter-affidavit filed on behalf of the respondents, the only plausible ^{defence} ~~difference~~ taken is that since the applicant was engaged as a part-time casual labourer, the terms of paragraph-1 of the Scheme, afore-quoted, would not affect his case. The precised controversy came up before a Full Bench of this Tribunal.

Hyderabad. The Full Bench approved the consistent view taken by the Earnakulam Bench that the Scheme would be applicable even to part-time casual workers provided such of the workers have rendered service for 480 days in two consecutive years. We have already indicated the relevant facts and those have not been controverted by the respondents.

The net result is that in accordance with the interpretation of the Full Bench, paragraph-1 of the Scheme would not attract the case of the applicant. Indisputably, the applicant was entitled to be given a temporary status on the date immediately before the order terminating his services was passed. We, therefore, do not find any force in the contention of the learned counsel for the respondents that since the applicant was not given a temporary status, his services could be dispensed with even by an oral order and without following any procedure.

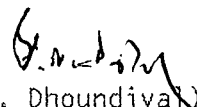
In the eyes of law, the applicant would be deemed to have acquired a temporary status and, therefore, his services can be done away only in accordance with paragraph-10 of the Scheme, which, in substance, lays down that the services of a casual labourer can be dispensed with after following the due procedure. Admittedly, this was not done in the present case. The oral order of termination, therefore, is not sustainable.

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
The order terminating the services of the applicant is quashed. However, we are not inclined to award back wages to the applicant as he has not performed duties during all these years. We also direct the respondents to treat the applicant as having acquired a temporary status. It goes without saying that it will be open to the respondents to dispense with the services of the applicant in accordance with law and in accordance with the terms of paragraph-10 of the Scheme.

The respondents shall reinstate the applicant within a period of one month from the date of receipt of a certified copy of this order by the competent authority. They are further directed to treat the applicant as in service all-along for the purpose of determining his seniority etc.

With these directions this O.A. is disposed of finally but without any order as to costs.


(B.N. Dhoundiyal)

Member(A)


(S.K. Dhaon)

Vice-Chairman(J)