

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

1795/94

198

DATE OF DECISION 12/12/97

Shri B. R. Ram

Applicant (s)

Mr. S. S. T. Ram

Advocate for the Applicant (s)

Versus

U. G. Brothers

Respondent (s)

Mrs. Meera Chhabra

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Shri R. K. Sharma, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes

(R K Sharma)
Member (A)

Central Administrative Tribunal
Principal Bench: New Delhi

OA 1795/94

New Delhi this the 12 day of December 1997.

Hon'ble Mr R.K.Ahooja, Member (A)

Sh. Budh Ram
S/o Shri Bhallahi Ram
R/o RZ-65/20, Sadh Nagar
Palam Colony, New Delhi-46..

...Applicant.

(By advocate: Mr S.S.Tiwari)

Versus

Union of India through

1. Secretary
Ministry of Defence
South Block
New Delhi.

2. Commander Works Engineers (Air Force)
Palam, Delhi Cantt.10. ...Respondens.

(By advocate: Mrs Meera Chhiber)

O R D E R

By Mr R.K.Ahooja, Member (A)

Applicant claims that on being sponsored by the Employment Exchange, he was initially engaged for 17 days as a daily rated Mazdoor on Muster Roll basis. Subsequently he was engaged from time to time for around 100 days in all. As per letter dated 31.10.1987 (Annexure 'H'), he was also selected by the Commander, Works Engineer (Air Force), Palam, Delhi for regular temporary appointment, but the offer of appointment was not given to him for some reasons. He made a representation alongwith his colleagues in July 1992 seeking employment on a regular basis in preference to fresh candidates who were being called from Employment Exchange but his grievance is that the respondents have not considered him even though subsequently two of his colleagues

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who had filed two different OAs were given appointment on the basis of judgement rendered by the Tribunal. He claims that he is also entitled to the benefit of the judgement of the Tribunal in the case of Anil Kumar Sharma and Hem Chander who are also similarly placed as the applicant. The applicant ^{they} prays for similar directions from the Tribunal as in the case of Anil Kumar Sharma (OA 968/92) & Hem Chander Vs. UOI (OA 1852/92).

2. Respondents in their reply have stated that the total number of days the applicant had worked is 100 days only and as per the existing government policy, cases of only those casual labourers who have completed 240 days and are in service at the time of consideration can be given regular appointment. Respondents also allege that the applicant has not come before the Tribunal with clean hands as he has given false statements regarding his engagement. They also point out that the Hon'ble Supreme Court had stayed the operation of the order of the Tribunal in OA 607/93 Ram Niwas & Others in which directions similar to that in the case of Anil Kumar Sharma & Hem Chander had been given by the Tribunal.

3. I have heard the counsel on both sides. An interim order dated 3rd July 1997 was issued in this case in which it was observed that it would be appropriate either to await the decision of the Supreme Court or to follow the ratio laid down in Anil Kumar Chander's case followed in Ram Niwas's case. Accordingly, it was ordered

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that the case might be kept pending till the Supreme Court delivered its decision on the SLP.

4. The Hon'ble Supreme Court has since delivered its decision and set aside the orders of this Tribunal by order dated 3rd April 1997 in civil appeal No.835/95 UOI Vs. Ram Niwas. The Hon'ble Supreme Court observed as follows:

"There is no scheme of the appellants for regularisation of employees who have completed less than 240 days of service in a year. Regularisation is ordinarily required when those in ad-hoc service are eligible and are qualified and have continued in service satisfactorily for long periods. Such is not the case here. The person who is to be regularised must be eligible and qualified for the post in which he is to be regularised. The requirement is lacking in the case of two respondents. Such regularisation must be in accordance with the relevant rules or a scheme. There is no scheme for regularisation for employees who have served for less than 240 days in a year. The order of the Tribunal is, therefore, unwarranted. It is set aside and the appeal is allowed accordingly. There will be no order as to costs."

4. It is an admitted fact on both sides that the applicant has not worked for 240 days and, therefore, in terms of the aforesaid decision of the Supreme Court, he is not eligible and qualified for consideration for regularisation on the basis of the casual service rendered by him.

5. Sh. S.S.Tiwari, learned counsel for the applicant has however vehemently argued that even if the applicant

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cannot be considered for regularisation on the basis of the casual service rendered, nevertheless he is entitled to be considered by the respondents for appointment against the post of Group-D for which the respondents had obtained requisition from the Employment Exchange. In this context, he has relied on the judgement of the Supreme Court in the case of The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh Vs. K.B.N. Visweshara Rao & Ors. JT 1996 (9) S.C. 638 in which it was held that though it should be mandatory to intimate the employment exchange, the Employment exchange should sponsor candidates strictly according to seniority and reservation as per requisition. In addition, Department should call for names by publication in newspapers and display on notice boards and announce in Radio/TV and consider all candidates who apply. Sh. S.S.Tiwari has submitted that the applicant in the ratio of the judgement is entitled to be considered though his name was not sponsored by Employment Exchange, as he has a right to equal opportunity under Article 14 & 16 of the Constitution. In my view, the facts of the present case do not permit application of the ratio of the Supreme Court judgement in the case of The Excise Superintendent Malkapatnam (Supra). Firstly, the applicant had, by way of interim relief, only sought a direction that he should be considered alongwith other candidates but his whole case was that he should be given preference on the basis of the casual service rendered by him. Secondly, there is no averment that the respondents had sought ^{applications from} any ~~other~~ medium other than the employment exchange. There is no ^{evidence} ~~communication~~ whatsoever that the respondents had published

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vacancies in the newspapers or called for names through TV/Radio. This being so, a person who comes to know through personal knowledge, without being sponsored by employment exchange, would gain undue advantage over other aspirants who have not been intimated through mass media regarding availability of such vacancies. It is true that the applicant is in a special position, if tomorrow jobs are available, since he has worked as casual labourer, but since no reasons have been adduced as to why his name was not sponsored by employment exchange, no direction as sought for by the applicant can be given.

6. In the circumstances, his plea to right to equality of opportunity cannot entitle him to special consideration when his name was not sponsored by the employment exchange.

7. In the light of above discussion, I do not find any merit in the OA. Same is accordingly dismissed.

R.K. Ahodja
(R.k.Ahodja)
Member (A)

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