

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.1955/94

New Delhi this the 20th Day of April, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.K. Singh, Member(A)

Shri Pramod Kumar,
S/o Shri Bhim Singh,
R/o B-1, WZ-41, Janakpuri,
New Delhi.

Applicant

(through Sh. K.L. Bhandula, advocate)

versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhavan,
New Delhi-1.
2. Chairman,
Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi-66.
3. Secretary to the Govt. of India,
Ministry of Personnel, Public
Grievances & Pensions,
(Dept. of Personnel & Training),
North Block, New Delhi-1.
4. Controlling & Auditor General,
Govt. of India,
Bahadurshah Zafar Marg,
New Delhi.
5. Sh. Shri Chand,
Dy. Director, Mont. Directorate
(S.E.)
Central Water Commission,
Room No. 402, Sewa Bhawan, R.K. Puram,
New Delhi-66.

Respondents

(through Sh. Madhava Panikar, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh. J.P. Sharma, Member(J)

The applicant was earlier engaged on casual basis in the office of Central Water Commission with Respondent No.5. His grievance is about the impugned order dt. 26.7.94, which is wrongly mentioned in para-1 of the application as 28.7.1994. This office memorandum was forwarded to Chairman and all Members of CWC by the

Under Secretary (TS) of CWC having certain observations in this letter regarding engagement and continuance of casual workers engaged by the department.

The reliefs claimed in this application are that the impugned order be quashed and a direction be issued to the respondents to allow the applicant to work upto 12.11.94 as he has been continuously working from March, 1993. A further direction be issued for grant of temporary status as per Deptt. of Personnel & Training O.M. dt. 10.9.1993 in view of the fact that the applicant has already completed 206 days in the year 1993-1994.

A notice was issued to the respondents who contested the application and stated that the applicant though working since 1990 as a casual worker but the number of working days are different. In the year 1990 32 days; in 1991 181 days; in 1992 177 days; in 1993 187 days & in 1994 200 days. The respondents have disputed the averment made by the applicant regarding the number of working days he has put in some of the years, it is stated that the applicant has not completed the requisite number of days in a calender year, so he is not covered by the circular dt. 10.9.1993 issued by Deptt. of Personnel & Training. The respondents have also rebutted the various averments made in the original application and finally stated that the applicant is not entitled to the grant of reliefs prayed for. Herein it may be mentioned that the respondents have taken a stand that 16 casual workers working with them have acquired temporary status and out of these 15 casual workers were

later on regularised against vacant group 'D' posts. The respondents have taken a specific stand that they are not dispensing with the services of the casual workers in the manner as alleged by the applicant so that he may not complete requisite number of days for getting the benefit of the aforesaid circular dt. 10.09.1993.

The applicant has also filed rejoinder and taken a stand that certain juniors have been retained who were engaged subsequent to the engagement of the applicant and that the applicant has been discharged from service arbitrarily and has been a victim of hire and fire policy adopted by the respondents. On the basis of the rejoinder filed by the applicant, we called the respondents to file a supplementary reply whether any person junior to the applicant has been retained or as fresh person from the market has been engaged as a casual worker after dispensing with the services of the applicant. A supplementary reply duly verified by the Deputy Director, CWC dt. 17.4.95 has been filed. In paragraph-2 of the said affidavit it is shown that one Sh. Mahesh S/o Sh. Kartar Singh was engaged in June, 1993, Sh. Om Prakash S/o Sh. Ram Bhagwan was engaged in October, 1994. Another person Mr. Lalit was engaged in May, 1994. Other persons mentioned were engaged earlier to the engagement of the applicant. It is also clearly stated that the above persons have been working at present in C.W.C. on casual basis.

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We have heard the learned counsel for the parties. The learned counsel for the respondents assisted by the departmental representative Sh. Swaran Singh, Junior Engineer argued that when the Government has enforced a Scheme, as a model employer hire and fire policy at their hands is not being so liberally exercised. The learned counsel for the applicant, however, also referred to certain facts and contended that the respondents do not allow the completion of 206/240 days working in a calendar year and the action of the respondents, therefore, is not guided by established norms but on the whims of the authority concerned, which is totally arbitrary, unfair, unjust and discriminatory. Article 16 of the Constitution provides for equity in employment without discrimination. It is not disputed by the learned counsel for the respondents that C.W.C. is an attached office of the Ministry and has to be guided by various O.Ms. issued by D.O.P.T. The circular dt. 10.09.1993 referred to above nowhere lays down that persons should not continue beyond 200 days as has been exhibited in the O.M. issued by Under Secretary by the order dt. 26.7.1994. This refers to a circular of C&AG of 9.3.94 referring to the circular dt. 7.6.1988 issued by D.O.P.T. As it is for the employer to get the work done by equal number of engaged casual workers as per job requirement, no direction can be issued in that regard. At the same time the respondents have been delegated the power of the President to discharge their duties in fair and just manner.

The learned counsel for the respondents has rightly conceded that the dispensing of the services of the applicant in September, 1994 cannot be justified as a person engaged subsequent to the engagement of the applicant in June, 1994 has been continued (Mahesh), while the applicant (Pramod Kumar) has been engaged in March, 1993. Not only this another person Sh. Om Prakash was engaged in October, 1994 which is the date of his initial engagement and obviously he was engaged after the services of the applicant have been dispensed with in September, 1994. The chart of number of days working given by the applicant is not disputed by the respondents and they have admitted that the applicant has worked for 211 days. If a person has worked for 211 days, he should have been considered atleast for engagement when the job requirement was necessitated. This act of the respondents, therefore, dispensing with the services of the applicant in September, 1994 cannot be said just, fair and equitable.

The applicant since then has not been engaged nor called for any engagement. The year 1994 has also ended and we are in the month of April, 1995. The applicant has also prayed to continue till November, 1994. Inspite of adjournments, the original application has not been got amended. The relief prayed for to continue the applicant upto November, 1994 becomes by itself infructuous.

What remains to be considered in this case only is that the respondents are expected to consider those who had already worked with them and if the

working days of such persons even goes 200 days, they should not be unceremoniously dispensed with the services unless it is found that they are not fit for the job requirement given to them or the work is no more available for them.

In the above facts and circumstances of the case, the application is partly allowed and disposed of with the observations that the applicant shall be preferred for engagement on job requirement as expeditiously as possible and he shall be considered alongwith others sponsored by Employment Exchange and may be given engagement as a casual worker till the job requirement lasts.

Costs on parties.


(B.R. Singh)

Member(A)


(J.P. Sharma)

Member(J)

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