

(3) 11
1
Central Administrative Tribunal
Principal Bench

O.A. 457/2000

New Delhi this the 6th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Mritunjoy Rajak,
S/o late Shri Guhram Rajak,
R/o 125/2, Pushp Vihar,
Sector I, Saket,
New Delhi-110 017. ... Applicant.

(By Advocate Shri G.S. Lobana)

Versus

1. Union of India through
Secretary,
Department of Electronics,
Electronics Niketan,
6, CGO Complex,
New Delhi-110 003.
2. Joint Director (Personal),
Department of Electronics,
6, CGO Complex,
New Delhi-110 003. ... Respondents.

(By Advocate Shri R.N. Singh proxy for Shri R.V. Sinha)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

In this O.A., the applicant has impugned the oral order passed by the respondents terminating his services w.e.f. 5.12.1997. He has also prayed for grant of temporary status on his completion of 206 days of service with the respondents and a direction to them to re-engage him immediately against one of the four vacant posts of Staff Car Driver, in preference to outsiders and freshers.

2. It is noted that the application has been filed on 14.3.2000 impugning the oral termination order, terminating the services of the applicant w.e.f. 5.12.1997. The applicant has stated that he has a recurring cause of action and that he has only now come to know that the respondents have called for fresh names from the Employment

18

A Exchange to fill up the four posts of Staff Car Driver and has stated that according to him there is no bar of limitation. He has also relied on the observations of the Hon'ble Delhi High Court in the order dated 23.8.1999 in Shishpal Singh and Ors. Vs. Union of India & Ors. (CWP No.5071/99) (Annexure A-I). In the present case, there is no averment of the applicant that any person junior to him has been appointed as a Staff Car Driver in his place and in the facts and circumstances of the case, the observations of the High Court in Shishpal Singh's case (supra) that the cause of action is a continuous one will not be applicable to the present facts and circumstances of the case. However, in the facts and circumstances of the present case, admittedly after the respondents had terminated the services of the applicant as a daily wage Staff Car Driver w.e.f. 5.12.1997, he along with other persons called from the Employment Exchange have been trade-tested for this post for the purpose of filling the four vacancies on regular basis sometime in September, 2000. Shri G.S. Lobana, learned counsel has submitted that the result of this test has not been announced so far.

3. According to the applicant's statement in paragraph 4.3 of the O.A., the applicant had been engaged for a period of 191 days. Learned counsel for the applicant has further submitted that the applicant had been paid for 15 days in December, 1997, and hence the number of days the applicant has worked with the respondents are even more, including the weekly holidays he is entitled to count. On the other hand, the respondents have submitted that the applicant has only worked on daily wage basis for 163 days from March, 1997 to December, 1997 and not 191 days as claimed by him. Shri R.N. Singh, learned proxy counsel has

js

submitted that the applicant, along with four other persons were engaged as Drivers on purely daily wage basis as a stop gap arrangement, as some of the regular Drivers employed by the respondents were on medical leave. He has also confirmed that the applicant has been trade-tested along with other eligible persons whose names had been obtained from the Employment Exchange for consideration for appointment as Drivers against the four vacancies which exist. He has contended that the question of granting temporary status to the applicant does not arise as the applicant held a Group 'C' post and not a Group 'D' post in terms of the Govt. of India DOP&T O.M. dated 10.9.1993. Shri Lobana, learned counsel has, however, submitted that the Supreme Court in Ram Kumar & Ors. Vs. Union of India & Ors. (1996(1) SLJ 116) has allowed regularisation of Railway Casual labourers working in Group 'C' posts after their screening and, therefore, there is no bar to the applicant being regularised as a driver in a Group 'C' post. I am unable to agree with the contention of the learned counsel for the applicant that in the facts and circumstances of the present case, temporary status can be granted to him, having regard to the provisions of the DOP&T O.M. dated 10.9.1993 which deals with casual labourers in Group 'D' posts.

4. Shri R.N. Singh, learned proxy counsel has also submitted that in three other cases where the applicants were similarly situated as the present applicant, the Tribunal has not granted the reliefs prayed for by them for regularisation. He has submitted two of the judgements, Kulvendra Vs. Secretary, Department of Electronics (OA 2937/97) and Vinod Kumar Vs. Secretary, Department of Electronics (OA 2936/97) in which orders were passed on

✓

(13)

25.8.2000, copies placed on record. In both these cases, the Tribunal had directed that in case the applicants apply for the post of Staff Car Driver on regular basis, they should be considered by the respondents along with other eligible candidates on their merits, in accordance with the rules and instructions. In Vinod Kumar's case (supra), reference has also been made to "giving due weightage of his service under them and in preference to his juniors and outsiders". Shri Lobana, learned counsel has submitted that in the facts and circumstances of the present case also, since the applicant has also appeared for the trade test which results are awaited, and it is not denied by the respondents that the applicant has rendered several months service even though on daily wage basis as Driver, he should also be granted weightage for this service in preference to juniors and outsiders. The result of the trade test has not been declared in view of the Tribunal's interim order dated 3.4.2000.

5. Learned counsel for the applicant has contended that the applicant has worked for actually 208 days with the respondents as a Driver on daily wage basis before the aforesaid oral termination order was passed by the respondents, terminating his services w.e.f. 5.12.1997. Having regard to the provisions of Section 21(3) of the Administrative Tribunals Act, 1985, and the facts in the present case, the O.A. is liable to be dismissed on the grounds of limitation, but in view of the fact that the applicant has been trade-tested in September, 2000 by the respondents themselves subsequently, the other claims of the applicant are being dealt with. However, it is made clear that the applicant is not entitled for grant of temporary status in terms of the DOP&T O.M. dated 10.9.1993 as he was

[Signature]

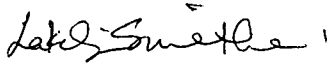
not a casual labourer holding a Group 'D' post. Learned counsel for the applicant has submitted that the applicant is otherwise eligible for appointment as a regular Staff Car Driver in terms of the relevant rules and instructions and has, therefore, prayed that some weightage may be given to his past satisfactory service as a Driver on daily wage basis as given to the other similarly situated person in the aforesaid case.

6. In the facts and circumstances of the case, the O.A. is disposed of with the following directions:

(1) The respondents to publish the results of the trade-test held on 11.9.2000 for the applicant and other eligible candidates for the post of Staff Car Driver within one month from the date of receipt of a copy of this order. Thereafter, they shall take an appropriate decision in the matter, in accordance with the relevant rules and instructions;

(2) In case the applicant is declared successful in the trade test, respondents to give some weightage to his previous service with them as a casual/daily wage Driver, in preference to his juniors and outsiders.

Parties to bear their own costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'