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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.79/2000

New Delhi, this the 12th day of December, 2001

Shri Rajender Kumar
(Casual Worker)
s/o Shri Sunder Lal
r/o 602/7, Gali No.16-Vijay Marg
Shadra
Delhi - 110 033. ... Applicant

(By Advocate: Shri T.C.Agarwal)

Vs.

Union of India through

1. The Secretary
Ministry of Information &
Broadcasting
Shastri Bhavan,
New Delhi - 110 001.
2. The Director General
Dir. of Advertising & Visual
Publicity, P.T.I. Building
Parliament Street
New Delhi - 110 001. ... Respondents

(By Advocates: Shri R.P.Agarwal)

ORDER

By Shanker Raju, Member (J):

The applicant, a casual worker with temporary status has assailed his termination from service and has sought payment of difference of pay with wages of the weekly off days, increment, etc. and also regularisation in a Group 'D' post.

2. Briefly stated, the applicant having approached this Court earlier in OA No.887/97, by an order passed on 19.11.1997 the Tribunal held that the applicant would be deemed to have continued as casual labour from the date of termination, i.e. 7.5.1995 till the date of his re-engagement ignoring the break and for accord of temporary status w.e.f. 1.10.1993

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as well as seniority and further re-engagement against future vacancies. In pursuance thereof the respondents have issued orders on 7.4.1999 granting temporary status w.e.f. 1.10.1993. The applicant seeks difference of pay on account of temporary status w.e.f. 1.10.1993. The applicant's services have been terminated w.e.f. 10.12.1999 without issuing him one month's notice as per rules. The applicant was further taken back on 13.12.1999. The applicant's services were again terminated on 1.3.2000. Respondents again re-engaged the applicant on 16.11.2000 but dispensed with his services on 15.3.2001. The applicant thereafter was not allowed to join and has not been regularised against Group 'D' vacancy as per the DoPT Scheme of 1993.

3. The learned counsel for the applicant, Shri T.C. Aggarwal, contended that having accorded the temporary status by an order dated 7.4.1999 retrospectively w.e.f. 1.10.1993 the services of the applicant should not have been terminated thrice on 10.12.1999 as well as on 1.3.2000 and 15.3.2001 without issuing him a month's notice as envisaged under para 7 of the DoPT's Scheme of 1993. The learned counsel for the applicant has placed reliance on a decision of this Court in Shri Umesh Singh & Others Vs. Union of India & Others, OA No. 630/96, decided on 11.4.1997 and also Hari Krishna Shankar Vs. Union of India & Another, (1998) 37 ATC 196 to contend that casual worker having temporary status cannot be put off duty and his services cannot be terminated without complying with the requirement of one month's notice. The learned counsel for the applicant has

further placed reliance on a decision of this Court in Arun Kumar Vs. Union of India & Others, decided on 15.12.1999 in OA No.661/99. Another contention of the applicant is that by disengagement of the applicant, he has been discriminated as his juniors have been retained. In this back ground, he has placed reliance on a decision of this Court in Umesh Singh's case (supra). It is also contended that on completion of three years the applicant is entitled, under para 5(vi) of the Scheme, for pay of weekly offs, increments and difference of pay with all consequential benefits. The applicant has filed MA No.665/2001 for the same relief and contended that if juniors are working without permitting the senior (i.e., the applicant) is against law. For this, he has placed reliance on Usha Rani Vs. Union of India & Others, (1991) 17 ATC 631. In this background, it is stated that some of the juniors and casual labourers without holding temporary status, on the directions of this Court in OA 670/2001, have been re-engaged despite their services being terminated on 15.3.2001, namely, S/Shri D.Bhattacharya, Ram Bhul, Ranbir, Garish Chand and Dinesh Kantoli. It is further contended that the applicant was engaged in 1991 as casual Group 'D' employee in the Directorate of Advertising & Visual Publicity (hereinafter called as 'DAVP') and dis-engaged on 7.5.1995. In this background, it is stated that in pursuance of the directions of this Court, he is to be treated in continuous service from 7.5.1995 and is entitled to the difference of pay from 1.10.1993. The respondents have accorded the difference of pay only w.e.f. 14.3.1997. The applicant has further stated that

despite having 9 regular vacancies of Group 'D' in Delhi, which have been filled by transfer, the applicant who is the only temporary status casual worker left for regularisation, has not been considered for the same. The name of the applicant in the common seniority list on all India basis is figuring at Sl. No.114 and two of his juniors are still working in the Ministry. The applicant further relied on the decision of this Court in Charan Singh & Others Vs. Union of India & Others, OA No.1070/2000 decided on 22.2.2001 to contend that casual worker has a vested right for regularisation in Group 'D' post in the office in which he is serving and inter-se seniority as maintained is not legally justified. It is stated that the applicant has completed 206 days, in all the years, which entitles him all the consequential benefits as per paras 5 and 7 of the DoPT's Scheme of 1993.

4. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents has stated that the applicant has been accorded the difference in pay w.e.f. 1.10.1993 and as per the OM dated 10.9.1993 benefit of increments and bonus is taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 206 days in the year. As the applicant has, after conferment of temporary status, not completed the requisite number of days, he is not entitled for bonus and increment. He has, however, already been given one paid weekly off after six days when he was engaged continuously for six days. As regards his engagement on the basis

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of common inter-se seniority, it is stated that Publication Division of one of the attached office of Ministry of Information and Broadcasting, has been designated the nodal agency and an inter-se seniority list has been prepared in respect of Ministry of Information and Broadcasting and its Media units (except Prasar Bharati) for the purpose of regularisation of casual labour. The applicant was engaged in DAVP and as and when there is work he had been given preference in engagement. As regards regularisation, it is contended that in his turn, as per his inter-se seniority, he shall be considered for being regularised against Group 'D' post and at present there is no regular post available to consider the case of the applicant. The respondents contended that the applicant has been paid, towards payment of wage arrears, Rs.14,491/- It is further stated that the dis-engagement of the applicant was on account of non-availability of work and his services have never been terminated on all the occasions as alleged by him. As per para 7 of the Scheme ibid, if the services are terminated finally and the casual worker is not to be re-engaged later on, even after conferment of temporary status, there is a requirement for giving him one month's notice. As the applicant's services have not been terminated finally but on account of non-availability of work not following the provisions of Para-7 of the Scheme would not be an illegality. It is also stated that the benefit of increment is taken into account for calculating pro-rata wages for every one year of service subject to the performance of duty for at least 206 days in the year from the date of conferment of temporary

status. As the applicant has not completed the required number of days in any year from the date of conferment of temporary status he would not be eligible for accord of the same. As regards the inter-se seniority it is stated that the same has been prepared in pursuance of the order passed in Contempt Petition No.344/99 in OA 1079/95, wherein the name of the applicant has also been included. It is further stated that the respondents had at no stage stated that inter-se seniority list of casual labourers with temporary status has been prepared for engagement and the casual labourers are engaged depending upon the availability of work and on completion of work they are disengaged. In this background, it is stated that the question of appointment or termination does not arise. The applicant has been granted leave strictly as per Para 5(iii) of the Scheme and further as per Para 5(vi) of the Scheme, casual worker with temporary status are treated at par with temporary Group 'D' employees for various benefits after rendering three years continuous service after conferment of temporary status. The applicant having failed to render continuous service of three years is not entitled for any benefits. As regards engagement of S/Shri D.Bhattacharya and four others, it is stated that in pursuance of the interim orders in OA No.670/2001 despite having no work, the applicants have been re-engaged which would not amount to any discrimination as contended by the applicant. It is also stated that without performing any work the applicant is not entitled to be paid the back wages and for grant of non-productivity linked bonus for the year 1999-2000; the applicant should have completed

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206 days in each year for three years or more; since the applicant has failed to complete the requisite number of days, he has rightly been disentitled under the Rules.

5. I have carefully considered the rival contentions of both the parties and perused the material on record. As regards the plea of the applicant regarding termination of his services without following the provisions of Para 7 of the DoPT's Scheme of 1993, I find from the provisions of this Scheme that despite conferment of temporary status the services of casual labour may be dispensed with by giving a notice of one month in writing. It is also equally provided that in case a casual labourer quits the service he has to give a written notice of one month. The wages for the notice period will be payable only for the days on which the casual worker is engaged to work. As per the provisions of the Scheme ibid, it is only when the services of a casual labour with temporary status is terminated or dispensed with finally, he is to be accorded one month's notice in lieu thereof. In the present case, the applicant's services have not been dispensed with in the terms of Para 7 of the Scheme. The applicant had been engaged on availability of work as and when his services were required as per Para 4(iii) of the Scheme and on non-availability of work the applicant has been disengaged and in the event the work is available he would be re-engaged thereon. As the services of the applicant have not been dispensed with or terminated finally, the respondents are duty bound to re-engage the applicant on availability of work.

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As such the contention of the learned counsel for the applicant that the applicant should be given one month's notice under Para-7 of the Scheme, would have no application in the facts and circumstances of the present case, is not valid and legal.

6. As regards the issue of according him difference of wages w.e.f. 1.10.1993 and the contention of the applicant that he has not been paid w.e.f. 1993 but has been paid w.e.f. 1997 is not borne out from any documents on record. The respondents have categorically made a statement that the applicant had been paid the difference in wages from 1.10.1993 and this has not been controverted. As such the grievance of the applicant is not well-founded. As regards the paid weekly off is concerned, the applicant has been accorded one paid weekly off after six days continuous work and has also been given the same when he was engaged continuously for six days. In absence of instances to indicate that the applicant has not been paid weekly off, the grievance of the applicant cannot be sustained.

7. As regards the increment and non-productivity linked bonus are concerned, as per the provisions of DoPT's Scheme, it is incumbent upon a casual worker who have completed 206 days in each year continuously for three years and after accord of temporary status, to be eligible for grant of bonus. As the applicant has not completed 206 days in each year for three years continuously, he is not entitled for non-productivity linked bonus. As regards the increment, the benefit of increment is taken into

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account for calculating the pro-rata basis for every one year service subject to completion of at least 206 days in the year from the date of conferment of temporary status. As the applicant has not completed the required days, he is not eligible for accord of increment.

8. As regards the regularisation, the respondents in pursuance of order in Contempt Petition No.344/99 have prepared an inter-se seniority list for according regularisation to casual labourers having temporary status by cadre controlling authority, i.e., Ministry of Information and Broadcasting wherein the name of the applicant has been included. As per his seniority and his turn, he would be considered for accord of regularisation against Group 'D' post on availability of vacancy and as per the relevant recruitment rules. The contention of the applicant that his seniority should be maintained at the respective offices would be of no avail to him. The applicant has also failed to indicate as to which of his juniors have been regularised earlier than him and no material to support this contention is available with the applicant as such the same is also not legally sustainable. So far as the re-engagement and discrimination by engaging juniors S/Shri D.Bhattacharya and four others is concerned, the juniors have been engaged, by way of interim order passed by this Court on 16.3.2001. As such the contention of the respondents that no junior to the applicant is engaged in DAVP and assigned inter-se seniority is not meant for the purpose of engagement but for regularisation appears to be legal and sound.

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I find no discrimination meted out to the applicant in violation of the Articles 14 and 16 of the Constitution of India.

9. In the result and having regard to the reasons recorded above, the claim of the applicant cannot be countenanced. However, the present OA is disposed of with a direction to the respondents to consider the claim of the applicant for regularisation against Group 'D' post in accordance with the seniority and in accordance with the relevant Recruitment Rules. Further in the event of availability of work, the applicant shall also be considered for engagement in preference to juniors and freshers. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/