IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. / T.A. No. 120 of ~~1989~~ 199 Dt 8/3/1991

DATE OF DECISION _____

Nanda Ballabh Pathak _____ Petitioner

Shri P.K. Nayyar _____ Advocate for the Petitioner(s)

Versus

Union of India & another _____ Respondent

Shri M.L. Verma _____ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. KRISHNAN, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. MAHARAJ DIN, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? no
4. Whether it needs to be circulated to other Benches of the Tribunal ? no

8.3.91
(MAHARAJ DIN)
MEMBER (J)

8/3/91
(N.V. KRISHNAN)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 120/89 DATE OF DECISION:

Nanda Ballabh Pathak ..APPLICANT

VERSUS

Union of India & another ..RESPONDENTS

Shri P.K. Nayyar ..counsel for the applicant.

Shri M.L. Verma ..counsel for the respondents.

CORAM:

Hon'ble Shri N.V. Krishnan, Administrative Member.

Hon'ble Shri Maharaj Din, Judicial Member.

J U D G E M E N T

(Delivered by Hon'ble Sh. Maharaj Din)

The applicant was employed as casual labour with respondents but instead of making his service regular, he was terminated on 1.7.1988, so the applicant has sought the relief that the order of termination dated 1.7.1988 be treated as illegal null and void and he be thereafter treated regular in service on re-instatement.

2. It is admitted that the applicant was employed as casual worker under the respondents and was posted at their Branch at Bal Sahyog Extention Service Centre at Connaught Circus, New Delhi on 24.4.1987 and he worked at the said post upto 1.7.1988. It is also not disputed by the respondents that on 1.7.1988, the applicant sustained leg injury while working in the Office and had gone under treatment since the same date. The termination

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Order dated 1.7.1988 was served on the applicant on the same date. It is said that the termination order of the applicant could not be passed at his back and without affording opportunity of being heard. The applicant claims to have attained the status of an permanent employee as he worked for more than 240 days each in two consecutive years. The applicant therefore has sought the relief that the respondents be directed to reinstate him to the post of permanent worker. He also claimed for payment of salary w.e.f May, 1988 and other benefits also. He prayed that the order of dismissal passed by the respondents against him, be quashed.

3. We have perused the record and heard the learned counsel for the parties. The admitted facts are that the applicants entered into the employment under the respondents on 24.4.1986. The services of the applicant were terminated on 13.12.1987 but he was however re-employed on 14.1.1988 and worked upto 1.7.1988. The respondents though in reply has said that on 1.7.1988, the applicant showed his inability to attend the office. The applicant on this date (i.e. 1.7.1988) was present in the office but on sustaining the leg injury, he left the office for getting the medical treatment. The order of termination from the service of the applicant was passed on the same day and it was duly served on him as would appear from Annexure R-1 on the reply. The applicant was admittedly employed as casual worker and wages were ~~been~~ paid to him on daily basis. The Rules as applicable in case of permanent employees and benefits permitted to them, cannot be given to the casual worker. The services of the casual

worker could be regularised as provided in the Office Memorandum No.49014/4/77-Estt.(C) dated 31st March, 1979 as well as OM No.49014/19/84-Estt(C) dated 26th October, 1984 issued by Government of India, Ministry of Home Affairs. The applicant served in first year i.e. from 24.4.1987 to 23.3.1988 for more than 240 days but in the second year he had not completed 240 days rather he worked for 69 days only from 24.4.1988 to 1.7.1988 which is a less than number of days required to regularise the services of the applicant. Thus, the applicant has not worked in each of the two consecutive years for 240 days and is not entitled to the benefit of regularisation of his service.

4. It is to be pointed out that the applicant could have completed the required term of 240 days in the second year as well if his services were not terminated w.e.f. 1.7.1988. The learned counsel for the respondents has argued that the services of the applicant were purely temporarily on casual basis and since there was no work in the Office of the respondents, therefore his services were no more required and the order dated 1.7.1988 terminating the services of the applicant who was employed as casual labour was accordingly passed. The learned counsel for the respondents has however agreed if in future there would be any vacancy of a casual labour, the applicant shall be given priority to engage him as a casual labour. The learned counsel for the applicant has said that the respondents have engaged some other person as a casual labour in their office. Since the person to has been engaged by the respondents as casual labour after termination of the services of the applicant

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is not made party to this case, therefore in his absence no order prejudicial to him, could be passed.

5. We note that in reply to para 9 of the application, it is stated that the order relieving the applicant on 1.7.1988 was issued at his request. This is totally unconvincing, because no casual labour who is to be hospitalised for injuries would have agreed to be relieved and lose a permanent source of income, when his need for such income was greatest. This ground is totally unreliable. Hence we find that instead of permitting the applicant to remain absent due to his injuries and hospitalisation, advantage of the situation was taken and his services were terminated. Therefore, the order dated 1.7.1988 terminating his service (Annexure R.I) is liable to be set aside.

6. In view of the discussion made above and taking into account the circumstances of the case, we quash the Annexure R.I order and direct that whenever any vacancy of a casual labour occurs under the respondents, the applicant shall be given priority for being employed as casual labour and for the purpose of seniority, the period from 1.7.1988, when his service was terminated till the date on which he will now be reengaged, when he was out of service, will be ignored. Likewise, for the purpose of regularization, the aforesaid period will be treated as the first part of the second year and the second part of the second year will commence from the date of his reengagement. The applicant is however not entitled to get wages after the period of his termination on 'no work no pay' basis.

No order as to cost of the case is made.

9.3.91

(MAHARAJ DIN)
MEMBER (J)

8/3/91

(N.V. KRISHNAN)
MEMBER (A)