

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(4)

O.A. No. 1774/89
T.A. No.

199

DATE OF DECISION 24.08.1990.

<u>Shri Kapil Dev Sahni</u>	Petitioner
<u>Shri Sant Lal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>Shri N.S. Mehta</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The grievance of the applicant, who has worked in the office of the respondents for about 3 years as a Casual Labourer, relates to termination of his services by verbal orders.

2. The facts of the case in brief are that the applicant was initially appointed as a Waterman on daily wages with effect from 15.4.1985 in the office of the respondents. He had been sponsored by the Employment Exchange. There had been technical breaks in between, but he worked as Casual Labourer till his services were terminated on 28.12.1988 by verbal orders.

5

3. On 23.1.1989, the respondents served a memorandum on the applicant stating that while working as a Casual Labourer, he had obtained wages for more days than he actually worked. Two instances were mentioned in the memorandum, namely, (i) claiming of wages for 30 days in April, 1988 though he had worked only for 10 days and (ii) claiming of wages for 30 days in May, 1988 though he had worked only for 23 days.

4. The applicant gave his explanation to the effect that he had not connived with any other person or practiced any fraud on the respondents in regard to the excess payment of wages to him. He also undertook to re-pay the excess amount drawn in lumpsum or in instalments on his reinstatement in service.

5. The respondents have stated in their counter-affidavit that the applicant is not eligible for appointment in a regular post and that his services have been dispensed with as they are no longer required. As regards the show cause notice issued to the applicant, they have stated that the matter is still under consideration.

6. We have gone through the records of the case and have considered the rival contentions. The respondents have not controverted the version of the applicant that he was initially engaged as a Waterman through the Employment Exchange in 1985. They have also admitted that his services were terminated on 28.12.1988. He has worked for nearly 3 years though there have been gaps in between when he was not engaged. The memorandum dated 23.1.1989 was issued to the applicant after

6

his services had been terminated. The memorandum alleges excess drawal of wages by the applicant for the months of April-May, 1988. It is not clear as to why his explanation in this regard was not sought before his services were terminated in December, 1988. In our opinion, the applicant cannot be held responsible for over-payments made to him by way of wages as in the case of Casual Labourers, the bill is prepared by the office itself after scrutinising the attendance register. The applicant is in no way responsible for the preparation of the bill. There is also no allegation that the applicant had marked attendance in the attendance register on the days on which he had not worked.

7. In the circumstances, the over-drawal of the wages by the applicant cannot be construed to be a misconduct on his part.

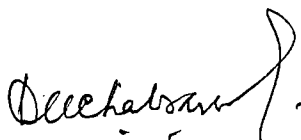
8. In this context, a reference may be made to the decision of the Himachal Pradesh High Court in Tek Chand Vs. The State of Himachal Pradesh and Others, 1987(3) SLJ 210 wherein the H.P. High Court has held that even a daily rated workman cannot be put out of employment on the ground of misconduct without complying with the basic rules of natural justice. Though no regular departmental enquiry is required to be held against him, ^{the} least that is required to be done is:

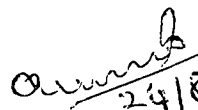
- (i) to inform him of the proposed action;
- (ii) to disclose to him the material sought to be relied against him;
- (iii) to afford him a reasonable opportunity to correct or controvert such material and to place his view point; and
- (iv) to arrive at a fair and just decision supported by reasons.

7

9. In the instant case, the memorandum was issued to the applicant after his services had been dispensed with. We are not impressed by the contention of the respondents that his services were terminated as they were no longer required. The alleged misconduct of the applicant was the very foundation of the order of termination. Consequently, we hold that the termination of services of the applicant with effect from 28.12.1988 is not legally sustainable. We, therefore, direct the respondents to reinstate him in service as Casual Labourer with immediate effect. In the facts and circumstances of the case, we do not, however, direct payment of back wages to him. We, however, make it clear that the reinstatement of the applicant pursuant to our order will not prevent the competent authority from taking appropriate action against the applicant for any alleged misconduct on his part, in accordance with law and in the light of the observations made herein-above.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
24/8/90


24/8/90
(P.K. KARTHA)
VICE CHAIRMAN (J)