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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.2187/89

This 13th day of May, 1994

Hon'ble Mr. J.P. Singh, Member (J)

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

Harish Ahuja
House No.9/6219 Mandir Street,
Gandhinagar,
Delhi 31

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Applicant

By Advocate: Ms. Kiran ~~Singh~~, Singh, Proxy for
Dr. D.C. ~~Vohra~~,
VERSUS

1. Union of India, through:
The Foreign Secretary,
Government of India,
Ministry of External Affairs,
New Delhi.

2. Shri K.D. Avadhani,
Under Secretary,
PA-II Section,
Ministry of External Affairs,
South Block,
New Delhi.

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Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R (Oral)

(Hon'ble Mr. J.P. Sharma, M(J)

The applicant has alleged that he was engaged as casual labourer (waterman) on 15.4.85. This averment has been denied by the respondents in their counter. It has been averred in the counter that the engagement of the applicant as a casual labourer is from 5.11.1985 on day-to-day basis as waterman. The applicant was however, appointed as Peon by the memorandum dated 23.12.87 on the condition that the appoint^{ment} is temporary and on year-to-year basis and the same can be terminated at any time by giving one month's notice without assigning any reasons therefor.

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2. The grievance of the applicant is that his services were terminated as Peon on 1.3.88 and as he was given appointment to that post, he could not have been terminated as it would amount to violation of principles of natural justice and would be violative of Art.311(2) of the Constitution of India. The applicant made a representation in April 1988 and thereafter filed this application with the request to quash the order dated 1.3.88 and to direct the respondents to take the applicant back in continuous service by the order dated 23.12.87 and he should be paid arrears of pay etc. He has also sought a direction to the respondent No.1 to institute inquiry proceedings against respondent No.2 for not following proper procedure while terminating the service of the applicant.

3. The respondents contested this application and stated in their counter affidavit that the application was misrepresented. The initial engagement of the applicant as casual labour was accepted as from 15.4.85. The respondents have annexed annexure R-A to their reply which is a written statement of the application in form of an application to the Under Secretary, Ministry of External Affairs. On the basis of this date of initial engagement of the applicant he was given appointment to group 'D' post, Peon, by the order dated 23.12.87. However, Class-IV Employees Association of Ministry of External Affairs, made representations to the respondents that the applicant, who had been too junior, has been appointed as Peon whereas those who were employed in May, August and November 1985 have not been appointed as Peon. There

respondents after going through the record found that it shall be discriminatory and also arbitrary if casual labourer who worked with them is appointed as group 'D' post ignoring the claims of all those who had already put in more years of work as casual labour with them. In view of this the applicant was reverted from the post of Peon by the order dated 1.3.88. It is also said that the applicant has also committed certain misconduct for which he was given a show-cause notice and the applicant has annexed that memorandum dated 20.1.89 to the application (annexure 'E'). The applicant has since been disengaged from work w.e.f. 13.12.88 and has not been working as casual labourer with them.

4. The applicant has also filed rejoinder reiterating the same facts as averred in the OA but he has not given any substantive evidence regarding his initial engagement as casual labourer (waterman) w.e.f. 15.4.85. In the rejoinder a reference has also been made to a case of Rehmatullah Khan & Ors. v. Union of India & Ors reported in 1989 (vol.2) SLJ page 293 (CAT) and that is only with regard to the fact that the casual labourers are holders of civil posts of Union of India and as such they come within the purview of Central Administrative Tribunal ACT, 1985. However, that is not the issue here as the application has already been admitted.

5. We have heard Ms. Kiran Singh, proxy counsel for Dr. D.C. Vohra, counsel for the applicant and Shri VSR Krishna, counsel for the respondents. The contention of the applicant's counsel is that when the applicant was appointed to Group 'D' post by memo dated 1.3.88, he could not have been reverted without giving one month's notice or one month's pay and allowance in lieu

thereof. The respondents have fairly referred to the representation of the Class-IV Employees Union where they have taken serious objection to the appointment of the applicant to group 'D' post in spite of the fact that he was too junior to be considered for that post and the persons who had put in more years of service as casual labourer, have been ignored. The learned counsel has referred to a list of casual labourers maintained by the respondents as on June 1987 which points out that the name of the applicant appears at Sl. No.64. While three persons, namely, Ram Chander, Bal Kishan and Ram Bachan are below him, they have been given benefit of engagement ignoring the claim of the applicant. We have gone through the list and we find that the list has been drawn on the basis of initial engagement of the applicant w.e.f. 15.4.85. The respondents, thus, considered this matter. There is no specific data before us to find out the respective date of engagement of the persons referred to by the applicant's counsel nor has the applicant filed any record of their engagement in order to show that these persons are junior to him regarding the period of work they have put in with the respondents. The Tribunal cannot make roving enquiry on this issue. Thus the order of reversion dated 1.3.88 passed by the respondents cannot be faulted with.

6. The applicant himself has filed a memo issued to him in January 1989 where it has been alleged that he committed certain misconduct during the period of his engagement as casual labourer. If a person is not coming upto the mark and he fails to satisfy the authorities by his performance on the job assigned to him, he cannot claim an equity for equitable relief with respect to those similarly situated employees working on casual basis. The applicant has since been

ceased from service w.e.f. 13.12.88. He is no more in the service of the respondents w.e.f. the said date. Now the relief of the applicant is only regarding the impugned order dated 1.3.88. In view of this, it is not necessary for us to go into the correctness of the memo. dated 20.1.89.

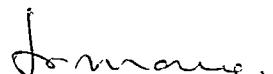
7. The applicant has also prayed that he is out of job and atleast he should be engaged on casual labour basis in preference to his juniors. An interim relief was granted to the applicant by the order dated 24.11.89 of this Tribunal that the respondents shall consider appointing the applicant as a casual worker subject to availability of vacancy and subject to his being found suitable in all respects for such engagement. We are not inclined to make this order absolute.

8. This OA is therefore dismissed as devoid of any merit but with the direction to the respondeants that they ~~may~~ ^{along with others eligible ones for} ~~shall~~ consider appointing the applicant as a casual worker subject to availability of vacancy and further, subject to his being found suitable in all respects.

Cost on parties.



(B.K. Singh)
Member (A)



(J.P. Sharma)
Member (J)