

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 926/1989.
T.A. No.

199

DATE OF DECISION 17.9.1991.

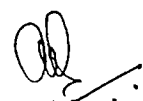
shri Raghunath Petitioner
Mrs. Kitty Kumaramangalam Advocate for the Petitioner(s)
Versus
U.O.I. & Ors. Respondents
shri P.P. Khurana, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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


(Amitav Banerji)
Chairman.
17.9.1991.

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 926/89.

DATE OF DECISION: 17.9.1991.

Raghunath

... Applicant.

Versus

U.O.I. & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Mrs. Kitty Kumaramangalam,
Counsel.

For the Respondents.

... Shri P.P. Khurana,
Counsel.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav
Banerji, Chairman)

A short question in this O.A. is whether the applicant who was a casual worker in the Central Bureau of Investigation (C.B.I.) is entitled to be reinstated in service after quashing the order of termination. His services were terminated on 30.6.1988. He has challenged the same in this O.A. and has prayed for regularisation and also back wages.

A few essential facts have to be noticed. The applicant's case is that he has worked in the Central Bureau of Investigation (C.B.I.), C.G.O. Complex, Lodi Road, New Delhi as a casual employee from 11.10.1984 to 30.6.1988. He was appointed along with two other casual workers namely Shri Rajbir Singh and Shri Harish Chander in the Head Office of C.B.I. They were all required to do miscellaneous work eg., loading, unloading, shifting, electrical work, maintenance, stationery work, fetching water, tea, etc.

a)

The Govt. of India issued a Memorandum with regard to CBI staff on 5.1.1984, and a complete ban was imposed on engagement of persons on daily wage basis for work of regular nature. Further, persons on daily wage basis could be engaged for work of purely temporary/casual/seasonal nature, if their recruitment is warranted by the requirements of a Ministry/Department. A person with a minimum period of 2 years service and at least 240 days as daily wage workers could be considered against a Group 'D' post, provided his recruitment was made through the Employment Exchange and he fulfilled the other conditions of eligibility. The applicant worked continuously barring holidays like Sundays, National Holidays and Festival days etc. His name was also recorded in the Muster Roll. It has also brought out in Annexure 'C' to the O.A. that he had put in 64 days of work in 1984, 266 days in 1985, 247 days in 1986, 264 days in 1987 and 104 days in 1988. It is urged that having put in more than 240 days in three successive years 1985, 1986 and 1987, his services could not be terminated. On 13.8.87 C.B.I. issued a circular referring to the memo dated 5.1.84 and another order of 1986 reiterating that these orders were still in force and were required to be implemented. The circular also stated that casual workers who had put in 2 years of service with 206 days were to be considered. This was, however, not implemented in the case of the applicant.

The President of the National Confederation of the Central Govt. Employees & Workers wrote to the Director of C.B.I. for regularising the service of the applicant. In a reply, it was stated that the matter was being examined. However, instead of regularising his service, his service was terminated w.e.f. 30.6.1988 and orally

on 3.7.1988 informed that he was no longer required. The services of Sarvashri Rajbir Singh and Harish Chand were retained by C.B.I. It is stated that Shri Rajbir Singh was doing the same work as the applicant and was appointed on the same day as that of the applicant. The President of the National Confederation again wrote to the Director, CBI that the applicant had been wrongly terminated and a letter was sent to the then Minister. The Director had replied that there was no vacancy of Peon/Safaiwala in CBI and as such his services were terminated.

In a counter affidavit filed on behalf of the respondents, it was admitted that the applicant was engaged on daily wage basis through the Employment Exchange. He was not engaged against any sanctioned post for a work of regular nature. His service was terminated after review, as there was no vacancy of Peon/Safaiwala in C.B.I. Head Office or C.B.I. Branches at Delhi. The letter sent by Shri Harish Rawat, M.P. (Lok Sabha), President of the Confederation was considered and a reply made thereto. In the case of Rajbir Singh, it was stated that he was regularised and appointed as Peon on 3.10.85 against an existing vacancy. The applicant could not be considered at that time because he had not rendered 2 years service as per instructions contained in O.M. dated 5.1.1984. It was lastly urged that since the applicant was working on Daily Wage basis as Casual Worker, he is not covered under CCS(CCA) Conduct Rules, which are applicable to regular Govt. employees. The termination order was legal, valid and justified. With these grounds, the prayer of the applicant to be taken him back in service was opposed.

We have heard Mrs Kitty Kumaramangalam, Counsel for the applicant, and Mr. P.P. Khurana, Standing Counsel for the respondents. There is no denial of the fact that the applicant had worked as Casual Worker from October, 1984. The contents of Annexure 'C' have not been denied. This clearly shows that the applicant had worked for more than 240 days each in the years 1985, 1986 and 1987. Therefore, it is evident that he had worked for more than 240 days and had fulfilled the requirement of putting more than 206 days as is indicated in O.M. dated 5.1.1984. In view of the above, the termination of the service of a casual labour who has worked for more than 206 days is not permissible under the rules. The O.M. dated 5.1.1984 makes it clear that such persons have to be regularised. The termination of the service on the ground that there was no post of Peon/Safaiwala on the date his services were terminated will, therefore, not hold good.

There is a clear direction by the Govt. that no casual worker will be kept in service for long stretches for doing the work which is being done by a regular worker. Even if the exigency requires for additional hands, casual labour may be engaged but should not be continued. The applicant's services could be terminated following the directions given from time to time. But it appears that his services were retained for long stretches and he had completed more than 240 days in three successive years 1985, 1986 and 1987. In the case of DAILY RATED CASUAL LABOUR VS. U.O.I. (1988(I) SCC 122), the Supreme Court directed the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department. In the case of


SAJJAN SINGH Vs. UNION OF INDIA (1986 (Supp) SCC 529),

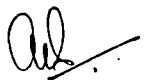
the Respondent's counsel gave an undertaking that the petitioners who are casual workmen in the employment of the Canara Bank and who have completed over 240 days of employment in a year, will be retained in service and will also be considered for absorption as and when a vacancy arises.

The law laid down in the above cases of the Supreme Court is clear and unambiguous. The services of a casual labour, who has put in more than 240 days of service in a year cannot be terminated. He is entitled to be taken back in service. Consequently, we do not see how the applicant's services could be terminated by the respondents.

We quash the order of termination and direct his reinstatement in service within a month from today. We further direct that he will be regularised in service as and when a vacancy arises. We, however, make it clear that during the period from 30.6.1988 - the date of termination - to the date of actual reinstatement, he would not be entitled to any back wages on the principle of 'no work and no pay'. We order accordingly.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)
17.9.1991.


(AMITAV BANERJI)
CHAIRMAN
17.9.1991.