

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 188/88
T.A. No.

199

DATE OF DECISION 2.8.1991

<u>Shri Subhash Chandra</u>	<u>Petitioner Applicant</u>
<u>Shri R.L. Sethi</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>Union of India</u>	<u>Respondent</u>
<u>Shri P.P. Khurana</u>	<u>Advocate for the Respondent(s)</u>

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, 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*

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

The applicant, who has worked as a Switch Board Assistant in the Office of the Garrison Engineer, Bhatinda Cantonment, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To direct the respondents to reinstate him in service;
- (ii) to direct them to pay full back wages and give all consequential benefits; and

(iii) to direct payment of equal pay for equal work.

2. According to the applicant, he has worked as a Switch Board Assistant on daily wage basis for a period of 253 days from 25.5.1985 to 15.4.1986. The version of the respondents is that he has worked for 228 days on muster roll. His services were terminated without giving him any notice.

3. The applicant contends that he fulfils the requirements under the recruitment rules at the time of joining the post, that he was appointed against a regular vacancy, and that there were no disciplinary proceedings against him.

4. The respondents have stated in their counter-affidavit that the applicant was engaged ~~for~~ each time for 25 days and was discharged from service after completion of 25 days. For each engagement, there was a gap of 10 to 15 days. According to them, no regular appointment could be made due to the ban imposed by the Government of India on the recruitment of regular employees. They have denied that after terminating his services, they have employed any other person in his place.

5. We have gone through the records of the case and have considered the rival contentions. The learned counsel for the applicant argued that persons similarly situated as

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the applicant, have been re-engaged by the respondents. The ^{applicant} ~~The~~ ^{an} ~~he~~ has not, however, given the particulars of such persons in the main application or the rejoinder filed by him. Reliance has been made on the decision of the Chandigarh ~~Bench~~ ^{an} of this Tribunal in Harmesh Lal & Others Vs. Union of India and Others, 1990 (1) A.T.J. 1. In the case before the Chandigarh Bench, Casual Labourers who had been engaged as Motor Pump Assistants/Refrigerator Mechanics/Mazdoors/Valvemen at Bhatinda Cantonment, had been terminated by verbal orders. The respondents had contended that no regular appointment could be made due to the ban imposed by the Govt. of India on recruitment of regular employees. The Tribunal referred to the provisions of Section 25F of the Industrial Disputes Act, 1947 and held that the retrenchment of the applicants was not legally sustainable as they had worked continuously for more than one year. The Tribunal, therefore, directed the respondents to reinstate the applicants in the posts held by them before retrenchment without any back wages being given to them.

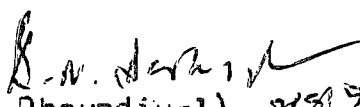
6. In the instant case, though the applicants ^{an} ~~have~~ ^a worked for only 229 days, according to the version of the respondents, if we add Sundays and other holidays, a view could be taken that the applicant has worked for 240 days in a year, after condoning the break in service. The

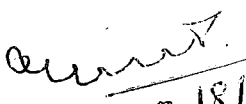
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question, however, arises whether there are any vacancies of Casual Labourers in the office of the respondents and whether any persons with lesser length of service have been retained in service after terminating the services of the applicant. There is no material on record to indicate that there are vacancies in the office of the respondents and that they have retained persons with lesser length of service or have appointed fresh recruits in his place.

7. In the circumstances, the only order that can be passed is that the respondents shall consider engaging the applicant as Switch Board ^{Assistant} ☒ if any vacancy becomes available in preference to persons with lesser length of service as also to fresh recruits. The application is disposed of with the aforesaid directions.

There will be no order as to costs.


(B.N. Dhoundiyal) 21/8/21
Administrative Member


21/8/21
(P.K. Kartha)
Vice-Chairman(Judl.)