

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL 8
NEW DELHI

O.A. No. 368/88
T.A. No.

199

DATE OF DECISION 23.8.1991

Shri Het Ram	xPetitioner Applicant
Shri G.D. Bhandari	Advocate for the Petitioner(s) Applicant
Versus	
Union of India & Others	Respondent
Shri M.L. Verma	Advocate for the Respondent(s)

CORAM

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

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? *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?

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

The applicant has stated that he has worked as a Mazdoor on muster roll on daily rates of pay in the M.E.S. from March, 1977 to January, 1987 with usual technical breaks. His services were terminated orally without any notice or pay in lieu of notice. The representation made by him against the termination was rejected by the respondents on 9.10.1987.

2. The applicant has stated that at the time of his appointment in 1977, he was within the age limit and that he had been sponsored by the Employment Exchange. He has *an*

stated that after discharging his services, the respondents have retained his juniors. He has not, however, given the names and other particulars of the juniors said to have been retained by the respondents.

3. The applicant has stated that when he was 19 years old, he was directed by the G.E.(P), Sirsa, to appear before a Board of Officers for regular appointment as Mazdoor, but due to some administrative reasons, the result was not announced. Thereafter, the Government imposed a ban on fresh appointments. He has stated that at the time of the filing of the application, appointments of Mazdoors have been allowed.

4. The applicant has stated that G.E.(P), Sirsa, had appointed Shri Arpender Kumar, Refrigerating Mechanic, when he was over-aged by 7/20 days. Shri Arpender Kumar had not served in the M.E.S. earlier and the age for appointment was 18-25 years.

5. The applicant has also given illustrative examples of persons who had been engaged in relaxation of the upper age limit (vide page 15 of the paper-book).

6. The respondents have stated in their counter-affidavit that the Tribunal has no jurisdiction to adjudicate upon the present application as the cause of action arose

Q

(19)

at Sirsa which falls within the territorial jurisdiction of the Chandigarh Bench of the Tribunal. They have further contended that the application is barred under the doctrine of res judicata as the Civil Suit No. 130/87 filed by them was dismissed as withdrawn on 24.2.1987 in the Court of Sub-Judge at Sirsa.

6. The respondents have contended that the applicant being a casual labourer or Mazdoor, does not hold a civil post, that he was not sponsored by the Employment Exchange, and that he has not worked for more than 240 days. They have, however, admitted that the applicant has worked on daily wages with technical breaks from 17th March, 1977 to 12th January, 1983 and thereafter, as on required basis, upto January, 1987 on muster rolls, as per the details given by them in Annexure 'B-1' to the counter-affidavit at pages 26-27 of the paperbook.

7. The respondents have contended that the registration of the applicant in the Employment Exchange, Sirsa, lapsed during 1983, as intimated by the Employment Exchange vide their letter dated 20.2.1989 and, therefore, he could not be considered for employment on regular/temporary basis. The respondents have also stated that the applicant was not within the age-limit at the time of his initial engagement in March, 1977.

8. We have carefully gone through the records of the case and have considered the rival contentions. ~~Exem~~ According to the particulars given by the respondents at Annexure B-1 to their application, the applicant has worked from 1977 to 1986 as Mazdoor with technical breaks. In our opinion, the filing of a Civil Suit by the applicant in the Court of Senior Sub-Judge, Sirsa, and its withdrawal by the applicant is of no relevance as it was filed in 1987, which was about two years after the constitution of this Tribunal. Any legal proceedings on service matters initiated after the setting up of this Tribunal in November, 1985, will have no legal validity. In view of this, the plea of res judicata raised by the respondents, is devoid of any substance.

9. The respondents have admitted in their counter-affidavit that the applicant has worked on daily wages w.e.f. 17th March, 1977 to 12th January, 1983 with technical breaks. Thereafter, he has been engaged on muster rolls upto January, 1987, as per the details given in the Annexure to the counter-affidavit. His disengagement was apparently due to the fact that his name was not sponsored by the Employment Exchange, Sirsa, as his registration had lapsed during 1983. In our opinion, the daily-rated employee who

had once registered with the Employment Exchange, is not required to get his name registered again and again with the Employment Exchange for the purpose of engagement.

10. The respondents have contended that at the time of the initial engagement of the applicant, he was over-aged and that he cannot be considered for appointment on regular basis. This argument also is not very convincing as the respondents had, on their own admission, engaged him on daily wages from March, 1977 to January, 1983 and thereafter, upto January, 1987 with technical breaks. After such long service, it would not be fair and just to discharge him from service on the ground that he was, or is over-aged or that his registration with the Employment Exchange lapsed at a subsequent date.

11. In the facts and circumstances of the case, we set aside and quash the impugned order of termination of the services of the applicant as Casual labour. Having regard to the length of service put in by the applicant from 1977 to 1987 with artificial breaks, the respondents are directed to engage the applicant as casual labourer in any of their offices, depending on the availability of a vacancy. They shall comply with this direction within a period of three months from the date of communication of this order. They shall also consider his regularisation in a suitable post
QV

by relaxing the rules relating to age as had been done by them in the case of some other employees working in their office. In the facts and circumstances, we do not direct payment of back wages to the applicant. The application is disposed of on the above lines. There will be no order as to costs.

D. Chakravorty
(D.K. Chakravorty)

Administrative Member

23/8/81
(P.K. Kartha)
Vice-Chairman(Judl.)