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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 383/88
TAX No.

198

DATE OF DECISION 29.9.1989

Shri Suresh Kumar

Petitioner

Shri T.C. Aggarwal

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. B.C. Mathur, Vice-Chairman

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 to be circulated to other Benches? No

(Amitav Banerji)
Chairman

(6)

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Shri T.C. Aggarwal Advocate for the Applicant (s)

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CORAM :

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
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4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

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

The Applicant, Shri Suresh Kumar, has filed the present Application under Section 19 of the Central Administrative Tribunals Act, 1985. Principally, the Applicant has sought relief to direct the respondents to regularise his services and to pay him on the basis of payment in their department, as admissible to other regular employees "throughout from date of his initial appointment."

The Applicant's case is that he joined the Central Government in the office of the Central Stores, All India Radio, Ministry of Information & Broadcasting as a Class IV employee with effect from 2nd December, 1982. He was sponsored by the Employment Exchange and he worked in that office from 2.12.82 to 5.6.83. Thereafter, he was taken in the Pay and Accounts Office of the All India

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Radio, Akashvani Bhavan, New Delhi under respondent, where he was still working. There were four posts of Peon available in the office of the Central Pay and Accounts Office, Ministry of Information and Broadcasting, Shastri Bhavan for which he made request for being appointed as per the standing instructions of the Government. He was given to understand that he would be considered against the said available clear vacancies in case his candidature was sponsored by the Employment Exchange. The latter sponsored the name of the applicant by a letter dated 11.12.1986 and the interview took place on 22.12.1986, but the applicant was not appointed against any of the regular posts and the two vacancies were filled by direct recruitment method. He relied on an O.M. dated 2nd December, 1966 by the Department of Personnel and Administrative Reforms, wherein it was stated that casual labourer appointed through the Employment Exchange and possessing two years experience will be eligible for appointment without any reference to the Employment Exchange. The Ministry of Home Affairs in O.M. No. 14/1/68-Ests.(C) dated 12.2.1969 indicated that the casual labourer who has put in at least 240 days of service (including broken period of service) during each of the two years of service referred to in the said O.M. dated 2nd December, 1966 will be entitled to the benefit of regularisation.

The Applicant has also stated that he belongs to the Scheduled Caste community and as such he was entitled to be considered for regularisation. The Applicant's services were dispensed with without any reason in January, 1988 and

he was again appointed in February, 1988, but his services were likely to be terminated at any time. He also stated that the act of respondent in giving artificial break was arbitrary and illegal.

In the reply by the respondents, it was stated that the Applicant was not a regular servant, but only a casual labour. The initial appointment in the office of the Station Engineer/Central Stores/AIR, New Delhi was a separate office over which the answering respondent has no control. He was employed as casual labour since 1983 and not in the capacity of casual Class IV peon. He was not appointed against the regular post. He was engaged for work of a casual nature and paid wages for the days he actually worked on the basis of the rates approved by the Government from time to time. It was further stated that no formal request was obtained from the applicant for considering him for regular appointment. He was interviewed by the Interview Board constituted for the purpose, but his name did not figure in the list of candidates by the Board. He was employed as and when need arose. He has worked for 163 days from June 83 to December 83, 276 days in 1984, 252 days in 1985, 235 days in 1986, 219 days in 1987 and in the first three months of 1988 he had worked for 32 days (Annexure R-I).

The question of giving him any break did not arise, but he was engaged only for the purpose for the work of casual labour. There was no question of dispensing with his services as it was automatic when the job was complete. Lastly, the applicant was not entitled to any relief and the Application

merits to be dismissed with costs.

In the rejoinder, the same pleas as in the Application were reiterated. The additional fact stated was that the applicant's work had been appreciated by the respondent. The respondent wanted to illegally get rid of the applicant and started with a break in service in January, 1988 and, thereafter illegally terminated his services on 30.3.1988. Reference was made to a number of decisions of the Hon'ble Supreme Court and the Central Administrative Tribunal.

There are several disputed questions of facts arising in the present case. The principal question of fact on which dispute lies is whether the applicant was engaged as a casual/daily rated worker or was employed as a casual Class IV peon. We have not been able to understand what is meant by the casual Class IV peon. We take that the term casual Class IV employee means a temporary class IV employee. There is a word of difference between the daily wager/daily rated workman and that of a temporary employee in a department of the Government. The former can be appointed for a specific purpose or for a specific work limited in duration and "terminated either with the completion of the work or even earlier." On the other hand, a temporary class IV employee is a person, who has been selected by the same authority having competence to do so in the grade of Class IV employee of the Government, but his service is temporary, terminable by notice or regularised in accordance with the prevailing rules.

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The applicant claims that he was doing the work of Class IV peon and he was entitled to be regularised. The respondent's plea is that he was never selected or appointed as a Class IV employee. He was not even a temporary Class IV employee, but only a daily wager at the minimum daily rate fixed by the Government and his work was from day to day and no rights accrued to him to be regularised. He was called for an interview and he was not selected and consequently the question of regularising his services did not arise.

We may refer to one paper filed by the Applicant (Page 16 of the Original Application) written by one Mr. N.R. Saini, Pay and Accounts Officer in All India Radio, Parliament Street, New Delhi to Mr. B.D. Mishra, Station Engineer, H.P.T. Kingsway, Delhi. This letter is relied upon by the Applicant. The contents of the letter are reproduced below as it helps in deciding several questions and facts:-

" Dear Shri B.D. Mishra,

I am enclosing herewith an application of Shri Suresh Kumar for the post of Farash lying vacant in your office. Mr. Suresh Kumar is working in this organisation since 6.6.83 on daily wages as peon. Before joining this office he was appointed by S.E. Central Stores through Employment Exchange and remained there from 2.12.82 to 4.6.83. By now he has completed 450 attendance in this office. The minimum no. required under the rules for regular appointment of a daily wages worker to a Group 'D' post is 240. Shri Suresh Kumar is a very honest, sincere trustworthy and laborious worker. He belongs to a very poor Scheduled Caste Family and his regular appointment will provide a great boom to the family. I would be grateful if you could consider his case for regular appointment in your organisation.

I assure he will prove an asset to your

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organisation.
with regards,

Yours sincerely,
Sd/- x x x
(N.R. Saini)"

A perusal of the letter shows that the Pay and Accounts Officer has clearly mentioned that the Applicant was working in the organisation from 6.6.1983 on daily wages as peon. This makes it clear that the Applicant has been working for more than three years on daily wages as peon. This letter must have been written before 22.12.1986, the date of the interview. The Pay and Accounts Officer, All India Radio, has indicated that the applicant has completed 450 days work in his office. The minimum number of days required under the rules for regular appointment of a daily wages worker to a Group 'D' post are 240. This letter clearly establishes that the applicant was working as a daily wages worker for more than 240 days. Whether he was working as a peon or in any other capacity is not relevant for he was working as a daily wager and his services were almost continuous through out this period. Even the chart produced by the respondent shows that the applicant had worked 691 days upto December, 1985 and another 235 days in 1986. This means out of a possible 1277 days in three and half years, he had worked 926 days. If all Sundays, second Saturdays and gazetted holidays in a period of three and half years are deducted from 1277 days, it would mean a total of approximately 1000 working days. Out of

1000 days the applicant worked 926 days. This indicates that the applicant although a casual worker/daily wager, he was working more or less regularly with the respondent. He would, in our opinion, be fully entitled to claim regularisation in view of his length of service.

One more fact that is to be noticed is: he was working as a Peon although he was not designated as such nor even as a temporary class IV employees, but the fact remains that he was associated with the Pay and Accounts Officer for more than three and half years and he was entitled to be considered for regularisation whenever a vacancy occurred.

The second disputed question is that whether the applicant had made any Application for being regularised his services. The respondents in their counter affidavit stated that the applicant had never applied for regularisation. This is controverted by the applicant and he refers to the letter of Mr. N.R. Saini, which we have quoted earlier. That letter itself shows that the Pay and Accounts Officer had recommended the applicant's case for regular appointment in another office of the All India Radio, namely Station Engineer, H.P.T., Kingsway, Delhi. According to the respondent, the applicant was called for an interview in December, 1986 for his regular appointment as peon,

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but he was not even fit by the Interview Board. It was also stated that, in the letter dated 5.6.87 written by Shri K.K. Mannan, Accounts Officer (Administration), there was no vacancy for the post of peon and the applicant may be informed accordingly.

The applicant in paragraph 6(IV) stated that the four posts of peon were available in the office of the Central Pay and Accounts Office, Ministry of Information and Broadcasting, Shastri Bhavan. Then, in paragraph 6(VII) the applicant stated that two vacancies were filled up by direct recruitment. His services were not regularised although he had a longest period of service as "casual peon." We have not been shown any paper which indicates the number of vacancies in the post of peon that existed in the office of the Central Pay and Accounts Office or in any other office of the All India Radio. We have also not been told the number of vacancies that arose in the year 1987 or 1988. We also do not find any thing on record whether the rules of reservation of Scheduled Caste/Scheduled Tribes were followed in the selection for the vacant posts of peon under the respondent.

Undoubtedly, the applicant is a member of the Scheduled Caste community. He is entitled to appointment on the basis of reservation of posts. If there were four and vacancies, there was 15% reservation, then at least one post would be earmarked for the Scheduled Caste person. It is imperative that while xxx recruitment is made in the

post of peon or regularisation of the service of casual/ temporary workman into that of class IV employees, the policy of reservation for SC/ST has to be followed.

Nothing has been brought to our notice whether any attention was paid in this regard while recruiting people to Class IV or regularising the service of casual or daily rated workers in the office of the respondent. Article 335 of the Constitution of India makes it clear that the claims of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or the State. Article 16(4) of the Constitution says:-

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state is not adequately represented in the services under the State."

The Central Government and the State Government thereafter made laws/rules for making reservations in the service of the Union or the State. This applies also to Class IV or Group 'D' employees. Reference may be made to the O.M.

No. 36011/33/81-Estt.(SCT) dated 5.10.81, issued by the

Department of Personnel and Administrative Reforms, where

(Appendix-2)
reservation on 40-point roster/and 100-point roster(Appx-3) have been provided. Direct recruitment to Group C&D posts normally attracting candidates from a locality or a region is to be governed by 100-point roster as given in Appendix-3 for percentages of reservation based on the population of SCs/STs

in these areas/regions. In Annexure-III, Model rosters, the entry against the Union Territory of Delhi is "Rosters as prescribed for recruitment on all-India basis to be followed." Consequently, Annexure-II (Model roster for Posts by direct recruitment on all India basis otherwise than by open Competition) would apply, which provides for reservation pointwise. Out of the first ten places, the first and seventh place would be reserved for Scheduled Caste and the fourth place for Scheduled Tribe and the remaining places would be treated as unreserved. This would mean if there were four vacancies, the first vacancy was to be filled up by the Scheduled Caste candidate and by no other.


It is, therefore, mandatory for any Central Government office to take this into consideration while making an appointment in any class of service (except which are specifically exempted). In this view of the matter, it was essential for the respondent to consider the case of the applicant for regularisation as Class IV employee.

We are also satisfied that the applicant's case for regularisation on the ground of having worked 926 days out of 1000 days justifies his regularisation of service with the respondent.

We, therefore, allow this Application with the directions that the respondent will consider the case of the applicant in the light of Government orders passed from time to time in the matter of regularisation of the services of the employees. We also direct the respondent to consider the matter and pass appropriate orders within a period of two

months from the date of receipt of this order.

There will be no order as to costs.


(B.C. Mathur)
Vice-Chairman (A)


(Amitav Banerji)
Chairman

"SRD"