

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 429/88 T.A. No. 198

DATE OF DECISION 21.12.1989

Shri Rajbir Singh Applicant (s)

None _____ Advocate for the Applicant (s)

Versus
Union of India & Another Respondent (s)

Smt. Raj Kumari Chopra Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. I. K. Rasgotra, 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. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who has worked as a daily-wage worker in the Directorate General, Doordarshan, filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) to restrain the respondents from terminating his services;
- (ii) to direct the respondents to regularise his services in Group 'D' w.e.f. the date of his appointment on 23.1.1987; and
- (iii) to direct the respondents to pay him a regular pay-scale as in the case of regular Class IV employees w.e.f. 23.1.1987.

2. The Tribunal passed ~~xx~~ interim orders on 22.3.88 and 19.5.88 by virtue of which he is still continuing to

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work as a daily-wage worker. The interim orders passed by the Tribunal were as follows:-

"22.3.1988"

It is asserted by the applicant that he has served more than 240 days in a year and last worked on 15.3.1988 and has thus acquired a status of a temporary servant and his services cannot be terminated. The respondents although served are neither present in the Court nor have filed any counter. The applicant, therefore, shall be continued in service pending further orders on this application."

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"19.5.1988"

It appears that the applicant has not worked for 240 days in a calendar year with Director General, Doordarshan before the impugned order was made. However, it is stated by the applicant that after his services were terminated, a few casual labourers were appointed which means there is a need to appoint the casual labourers. If that be so, the applicant shall be continued in service. As it is admitted that he has worked with Doordarshan for 194 days commencing from 5.5.1987, when fresh appointments of casual labourers are made, there is no reason why the applicant should not be continued. He shall, therefore, be continued as casual labourer pending further orders on this application."

3. The pleadings in this case are complete. The respondents have filed MP-791/88 for vacating the stay. Though the respondents have not filed a counter-affidavit in the main case, the learned counsel appearing for the respondents stated that the MP-791/88 filed by the respondents for vacating the stay may be taken as their counter-affidavit.

4. The facts of the case are disputed between the parties.

5. The version of the applicant is that the Employment Exchange sponsored his name for appointment as Casual Labourer to the respondents and he was appointed as such

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w.e.f. 23.1.1987. He was employed against a regular vacancy and has put in 258 days of service till the date of filing of the application on 16.3.1988. The respondents had threatened to terminate his services w.e.f. 15.3.1988 which, according to him, amounts to retrenchment within the meaning of Section 2(00) of the Industrial Disputes Act, 1947. It is alleged that the threatened action would also be in violation of the provisions of Sections 25F and 25N of the Industrial Disputes Act and contrary to Industrial Disputes (Central) Rules, 1957. He claims that he has a right to be absorbed in a permanent vacancy and in this context he relies on Section 25-H of the Industrial Disputes Act and Clause 20.12 of the Bipartite Settlement dated 19.10.1986. He submits that the termination of service will be violative of the provisions of paragraphs 495, 524 and 522(5) of Shastri Award. He has also alleged that while terminating his services, the respondents have retained persons who were employed after he had been employed.

6. In proof of having worked for more than 240 days, he has produced a copy of a testimonial given by the Programme Executive of the Office of the Station Director, All India Radio, wherein it is stated that he has worked during the period from 23.1.1987 to 15.4.1987 after excluding Sundays and holidays.

7. The version of the respondents, as could be gleaned from MP-791/88, is that he never completed 240 days, as alleged. He was engaged on daily wages for the first time on 5.5.1987 and not on 23.1.1987 as contended by him. He was engaged as a casual worker for doing the casual nature of job and when the job was over, his services were discontinued. He was not

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appointed as Group 'D' employee against any regular vacancy, as alleged. The respondents have given the working chart of the applicant with the respondents as follows:-

"May, 1987 - He worked for 23 days
June, 1987 - again he worked for only 23 days
July, 1987 - he worked for 26 days
August, 1987 - again he worked for 23 days
September, 87 - he worked only for 11 days
December, 1987 - the applicant worked only for 17 days."

8. Thus, according to the respondents, the applicant has worked only for a period of 123 days in the whole year of 1987. He was again engaged in January, 1988 as a Casual Worker and he worked for a period of 30 days. In February, 1988 also, he worked for 28 days. In March, 1988, he worked for 13 days. The total period worked by him upto 15.3.1988, when he was disengaged, works out to 71 days only.

9. The respondents rely upon O.M. NO.49014/19/84-Estt.(C) dated 26.10.1984 issued by the Department of Personnel, according to which, "the Casual Worker may be considered for regular appointment to Group 'D' posts, if otherwise eligible, if they have put in two years of service as Casual Worker with 206 days of service during each year in the organisation observing 5 days week (as against 240 days applicable for organisations observing 6 days week)."

10. In view of the above, the respondents have contended that the applicant does not fulfil the requirements laid down in the aforesaid O.M.

11. We have carefully gone through the records of the case and have heard the learned counsel for the respondents. The case had figured on the list of ready cases for final hearing and was on board for a number of days. On 17.11.1989, we heard the learned counsel for the respondents. Shri Sunil Malhotra, learned counsel for the applicant, made a mention in the Chambers of Vice-Chairman(J) thereafter and requested for an adjournment to a date subsequent to the General Elections. The case figured as a part-heard case upto 24.11.1989. The learned counsel for the applicant was given ample time upto now to present his oral arguments, if any. But neither the applicant nor anyone on behalf of him appeared till today.

12. The learned counsel for the respondents was good enough to make available to us the relevant files and documents, including the attendance registers maintained by them. On a perusal of the same, it is clear that there is no record to indicate that the applicant initially joined the office of the respondents on 23.1.1987. This is borne out from the attendance register produced by them. His name was sponsored by the Employment Exchange only in April, 1987.

13. In the facts and circumstances of the case, we are of the opinion that the applicant has not substantiated his claim that he has worked for more than 240 days or more in 1987 or 1988, or in both years. In case, an employee has not worked for 240 days during two years consecutively, he cannot be considered for regular appointment in terms of the O.M. issued by the Department of Personnel on

26.10.1984. The applicant does not fulfil the requirements of the said O.M.

14. The applicant could be treated to have worked for 240 days, even if Sundays and holidays are also to be included. Inclusion of Sundays and holidays would be justified only in the case of a workman to whom the provisions of the Industrial Disputes Act apply. In our opinion, the Directorate General, Doordarshan, is presently part and parcel of the Central Government and it is not an "industry" and the employees of Doordarshan are not "workmen" within the meaning of the Industrial Disputes Act.

15. The applicant has referred to certain provisions of the Shastri Award and to the clauses of the Bipartite Settlement dated 19.10.1986. We cannot express any views in regard to the applicability of the same as the applicant has not chosen to substantiate their relevance to his case.

16. The applicant has not substantiated his contention that persons who were employed afterwards are being retained by the respondents. No particulars of the alleged juniors have been placed before us.

17. In the light of the above, we see no merit in the present application and the same is dismissed. The interim orders passed by the Tribunal on 3.5.1988 and 19.5.1988 are hereby vacated. We, however, direct that in case the respondents need the services of a daily-rated worker, they shall consider appointing the applicant in preference to outsiders.

18. The parties will bear their own costs.

S. L. Gupta
(I.K. Rasgotra) 24/12/88
Administrative Member

Parivartit
24/12/88
(P.K. Kantha)
Vice-Chairman (Jud. I.)