

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A. NO. 207/86

Date of decision: 20.9.91.

SH. DHARAM VEER

.....

APPLICANT

VERSUS

EXECUTIVE ENGINEER

.....

RESPONDENTS

**CORAM:-**

THE HON'BLE MR. RAM PAL SINGH, VICE CHAIRMAN

THE HON'BLE MR. R. VENKATESAN, MEMBER(A)

COUNSEL FOR THE APPLICANT : SH. R.K. SAINI

COUNSEL FOR THE RESPONDENTS : SH. T.S. KAPOOR

**JUDGEMENT**

(of the Bench delivered by Mr. R. Venkatesan, Member(A)).

The applicant in this case has come before this Tribunal with the prayer to direct the respondents to declare him as in regular service as a Typist and not as a daily-wager. His further prayer is for quashing an order dt. 30.8.1985 only.

2. The facts of the case as per the applicant are that he was employed on daily wages for doing typing work from 7.5.1980. He passed the typing test from the Employment Exchange at the speed of 46.2 w.p.m. on 8.8.1981. He avers further that after working for three years on daily wages, the respondents issued orders on 31.10.1983 appointing him ad hoc as a Work Charged Beldar initially for a period of three months from 1.11.1983 and thereafter with further extensions upto 30.9.1985. He contends that during this period, he continued to be employed as a Typist. After 1.10.1985, his ad hoc service was not extended as per the impugned order of

*Deventhan*

31.8.1985, but he contends that he was continued to be employed on daily wage basis as a typist from 1.10.1985 upto 30.4.1986 after which date he was terminated finally.

3. The learned counsel for the applicant drew our attention to para 6(a) of the reply affidavit of the respondents in which it has been admitted that the applicant worked from 1.11.83 upto 30.9.1985 as Beldar in a regular pay scale. He also drew attention to para 6(b) of the reply in which the fact that he was employed on daily wages as typist from 1.7.1980 to 31.10.1983 had not been denied.

4. The learned counsel for the applicant drew our attention to the statement filed with the application according to which the number of days worked from 1.7.80 upto 31.10.83 has been furnished, which shows that during this period the applicant had been working practically continuously on all working days and this period was followed by ad hoc appointment for a further period of 23 months employment in a regular pay scale. Thus, the applicant had worked for more than five years continuously as a typist partly on adhoc basis and partly on daily wages. He possesses the necessary qualification for a post of typist, being a matriculare <sup>had</sup> and/ also passed a typing test. He accordingly contended that in the light of the decisions in (i) JT 1989 (4) SC 541 Bhagwati Prasad Vs. Delhi State Mineral Development Corporation. (ii) JT 1988(2) SC 30. (iii) JT 1988(1) SC 29. (iv) 1987 (2) SLR 769, holding that Work Charged or daily rated employees who had worked on ad hoc basis

*D. K. Chaturvedi*

continuously for periods of three years or more were entitled to regularisation.

5. The learned counsel for the applicant also contended that while applicant himself had been discharged w.e.f. 30.4.1986 another person who was similarly placed to him, Sh. Sattey Singh, was given employment by transferring his services to another division. The learned counsel for the applicant contended that the applicant had been discriminated against by the respondents and that they had arbitrarily chosen Sh. Sattey Singh for giving further employment.

6. The learned counsel for the respondents drew our attention to the reply affidavit and contended that the applicant <sup>had not</sup> ~~having~~ been continuously engaged but had been employed intermittently with frequent breaks from time to time. He also contended that the applicant was initially not qualified as a typist and he acquired the qualification only subsequently. He further stated that the mere fact that the applicant had possessed or acquired the minimum qualifications for the job of typist did not automatically entitle him to regularisation. The regular appointment would have to be done only when vacancy occurs and after following due procedure. He also denied that the applicant had been working as a typist through-out the period. He stated that for a limited period from 1.11.1983 upto 30.9.1985, he had been employed as a Work Charged

*D. Venkatesh*

Beldar-cum-Chowkidar on an ad hoc basis, and during this period he was not working as a typist. The letter of appointment made it very clear that the appointment was being made subject to termination at any time without assigning any reason and that it will not ~~be~~ entitle the incumbent to claim ~~for~~ seniority and title to regular appointment. The appointment had also been made only for a specified period.

7. From the facts and averments, it is clear that the respondents have accepted that the applicant was employed as a Work Asstt. (Typist) during this period from 7.5.1980 upto 31.10.1983 on daily wages and further as a Beldar/Chowkidar from 1.11.1983 upto 30.9.1985 on an ad hoc basis. They had also admitted that he was employed as a Work Asstt. Typist on daily wages from 1.10.1985 upto 30.4.1986. Thus, it is admitted that the applicant had worked more or less on continuous basis from 7.5.1980 upto 30.4.1986 i.e. to say for a period of nearly six years, <sup>mostly as typist.</sup> It has also not been

denied that the applicant possessed the minimum qualifications for a typist although he did not initially possess them. They have no doubt used the expression that he was employed with "usual breaks". This obviously, refers to artificial breaks of a few days which are given between successive spells of continuous employment

D. Venkatesan

in order to give an impression that the employment has been intermittent. As the respondents have not specifically denied the correctness of the statement of the number of days' attendance which have been appended to the application at page 10 of the type set, we conclude that the applicant has for all <sup>intents and</sup> purposes been engaged continuously from 7.5.1980 onwards as Typist or as Beldar on casual or ad hoc basis. It is now well settled that the casual employees continuing for long periods are entitled to regular appointment. We may refer to the judgement of the Supreme Court in "Daily Rated Casual Labourers employed under P&T and National Federation of P&T Employees Vs. U.O.I." AIR 1987 S.C. 2343 in which the Supreme Court directed the P&T department to prepare a scheme on a rational basis for absorption as far as possible of the casual labourers who had continuously worked for more than one year in the P&T department. We may also refer to the judgement of the Supreme Court in "Dharwad District P.W.D. Literate Daily Wage Employees Association Vs. State of Karnataka" 1990 12 ATC 902 in which the court observed; "Equal pay for equal work and providing seniority for services by regularising casual employment within a reasonable period have been informly accepted by this court as a constitutional goal to our socialistic polity." The court then directed, "The casual/daily rated employees

Dharwad

recruited on or before 1st July, 1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs. 780/- per month without any allowances w.e.f. 1.1.1990. They would be entitled to an annual increment of Rs.15/- till the services are regularised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest Group D cadre under the Government but would be entitled to all the benefits available to regular government servants of the corresponding grade." The court also gave direction that those casual daily rated employees who had completed ten years of service as on 31.12.1989 should be immediately regularised w.e.f. 1.1.1990 on the basis of seniority-cum-suitability.

8. Inasmuch as the applicant has put in continuous service either on daily rated or ad hoc basis for nearly six years, and more-over it has not been denied that he had acquired the necessary minimum qualification for the post of typist at the time of his being discharged, we consider that he is entitled to be considered for regular appointment. We also hold that he has a prior claim for being appointed on an ad hoc basis or against a casual vacancy that may arise under the respondents, in preference to others with lesser length of casual/adhoc service than the applicant. We accordingly direct the respondents to place the applicant in a pannel

*Wanchetan*

for ad hoc appointment or casual appointment posts, which may be filled up on ad hoc or daily rated basis, keeping in view the over all length of service from May, 1980 upto 30.4.1986 as a single unbroken spell of employment on casual-cum-ad hoc basis for determining his seniority. The applicant shall also be given three chances to appear in a test or examination for regular appointment, as a typist-clerk or any other Gr.'C' post for which he is eligible, <sup>deeming</sup> ~~decreasing~~ the age-limit to have been relaxed in his case. The test may be administered directly by the respondents or the Staff Selection Commission. He shall thereafter be regularly appointed if he qualifies in the said test or examination.

The application is disposed of as above without any orders as to costs.

*R. Venkatesan*  
(R. VENKATESAN)  
MEMBER(A)

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE-CHAIRMAN

/VV/