

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

507/

1987

DATE OF DECISION August 17, 1989.

Shri Raj Pal

Applicant (s)

Shri Rishikesh

Advocate for the Applicant (s)

Union of India & Others

Respondent (s)

Shri P.H. Ramchandani

Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.
yes.
no.
no.

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was appointed as a daily wage Peon, for different periods in the office of Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, and whose services were terminated with effect from 27.10.1986, has prayed for his reinstatement in service as a Peon; regularisation of his appointment on permanent basis; and payment of salary and allowances etc. with effect from 21.5.1985 in the pay scale for regular peons.

2. The salient facts of the case are as below: -

On being sponsored by the Employment Exchange where the registration of casual labourers / daily wagers is done, the applicant was appointed as a daily wage Peon first against a leave vacancy for a short period from 21.5.85 to 7.6.85. He

10

was again appointed on daily wage basis as Waterman from 28.6.85 to 31.10.85 and on his application dated 31.10.85 for the post of daily wage peon, he was again appointed as a daily wage peon from 21.11.1985 against the post sanctioned upto 15.11.1986, but his services were terminated vide Order dated 23.10.1986 with effect from the forenoon of 27th October, 1986, as the post against which he was appointed stood abolished with effect from the forenoon of 27.10.1986 as the Government decided not to extend the sanction for one additional Bench, consequent to the creation of which the applicant was appointed. The applicant's case is that there were and there are still vacant posts of peon in that Tribunal and that not only his juniors S/Shri Hari Ram and Chet Bahadur who were also working as peon on daily wage were continued while his services were terminated, but at the fresh request to the Employment Exchange, fresh appointments have been made since then. He has, therefore, alleged that the order terminating his services is illegal and unwarranted and he should, therefore, be reinstated into service as a regular peon and should also be allowed pay and allowances as are admissible to a regular peon with effect from the date of his first appointment i.e., 21.5.1985.

3. The respondent's case is that the appointment of the applicant along with some others was made on daily wage basis pending regular appointment and that his name was sponsored accordingly by the Employment Exchange which registers candidates for appointment on casual / daily wage basis. As the additional Bench for which the post was sanctioned stood abolished with effect from the forenoon of 27.10.86, the services of the applicant along with two others were terminated with effect from the forenoon of 27.10.1986 vide Order dated 23.10.86 (Annexure 'C' to the application). As regards the contention of the applicant,

Cur

11

that S/Shri Hari Ram and Chet Bahadur were junior to him but their services were not terminated, it has been stated by the respondents in the counter-affidavit that both of them were senior to the applicant, as Shri Hari Ram had joined on 21.5.1984 and Shri Chet Bahadur had joined on 13.5.1985. They had also put in more days of service than the applicant and on the principle of "First come and last go" they were entitled to be retained in preference to the applicant.

4. Apart from making a contention in the application and its reiteration in the rejoinder-affidavit and the additional affidavit to the effect that these S/Shri Hari Ram and Chet Bahadur were junior to the applicant, the applicant has not been able to substantiate his contention in this respect. He has also not been able to show that on the day his services were terminated, the services of any other person junior to him in his category were retained by the respondents. In these circumstances, we have to hold that the principle of "Last come first go" has been rightly followed by the respondents and the plea of wrongful termination of services of the applicant is devoid of any merit.

5. The applicant has contended repeatedly that on the day his services were terminated and thereafter there have been vacancies of peon in the Tribunal. The respondents have clearly stated that as on 26.10.1986, no post of peon was vacant in the Tribunal and that when the posts of one Bench were abolished with effect from 27.10.86 by the Government, services of juniormost persons including the applicant were terminated and that this position was communicated to the applicant in reply to his representation (reply at Annexure 'E' to the application). Therefore, it is not possible to direct the respondents to reinstate the applicant on the post of peon, what to say of 'regular' peon with effect from the date of termination of his services.

6. The applicant has prayed for regularisation of his services on the post of a permanent peon. It was argued by

the learned counsel for the applicant that the applicant is a workman under the Industrial Disputes Act, 1947. This contention is devoid of any merit as neither the Ministry of Finance, Government of India, nor the Customs, Excise and Gold (Control) Appellate Tribunal^{Ge}, which is under the administrative control of the Ministry of Finance, is an 'industry' or can be treated to be an 'industry' under section 2(j) of the Industrial Disputes Act, 1947.

7. It was then contended that the services of the applicant should be regularised in accordance with the Government's instructions contained in O.M. No.49014/7/83-Estt.(C), dated 13.10.87 as he had completed 240 days in 12 calendar months.

8. The instructions in regard to general terms and conditions for employment of casual labour in Central Government offices were reviewed by the Government keeping in view the judgement of the Supreme Court delivered on 17.1.1986 in the writ petition filed by Shri Surinder Singh & Another Vs. Engineer-in-Chief, CPWD and Others (1986 (1) SCC 639). These are mentioned in Chapter 18 on page 154 onwards in Swamy's Complete Manual on Establishment and Administration for Central Govt. Offices (Second Edition). The main features of these instructions are:

- (1) that all eligible casual workers be adjusted against regular posts to the extent such regular posts are justified;
- (2) that no casual labour not registered with the Employment Exchange should be appointed to posts borne on the regular establishment;
- (3) that casual labourers appointed through Employment Exchange and possessing experience of minimum of two years' continuous service as casual labour in the office / establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment in that office/establishment without any further reference to the Employment Exchange;

See

13

- (4) that a casual labourer may be given the benefit of 2 years' continuous service as casual labourer if he has put in at least 240 days (226 days in the case of offices observing 5 days week) of service as a casual labourer (including broken periods of service) during each of the two years of service referred to in (3) above;
- (5) that where the nature of work entrusted to the casual worker and a regular employee is the same, the casual labourer may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day, but the payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as also for a National Holiday, if it falls on a working day for the casual workers; and
- (6) that the casual workers may be given one paid weekly off after six days continuous work.

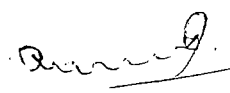
9. The applicant's contention is that he worked for 185 days in the year 1985 and for 296 days in the year 1986. The respondents have, however, contended that he worked in the respondents' office for 258 days in the first year and for 151 days in the second year and as such, he is not eligible for regular employment in the time scale pay of the post as prayed for by him. The difference in calculations appears to be on account of the applicant adopting calendar year as the basis while the respondents have taken financial year basis, and the applicant having included weekly holidays which the respondents have not taken into account. Even if for the sake of arguments, the calculations given by the applicant on page 2 of his rejoinder-affidavit are taken to be correct, he still does not meet the requirement of having put in at least 240 days (226 days in the case of offices observing 5 days week) of service as a casual labourer during each of the two years of service which are relevant. The applicant cited the case of *WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION* (1985 (4) SCC 71)

and the case of H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS (1985 (4) SCC 201) for the manner of calculation of days actually worked. Both these cases are not relevant in the case before us because these pertain to workmen covered by the Industrial Disputes Act, 1947 and the decision of the Supreme Court was with reference to the 'Explanation' in Section 25-B thereof. Therefore, the applicant is not entitled to be regularised as per the Government instructions on the subject as he has not put in service for 240 days or 226 days, as may be applicable, in the continuous two years during which he was employed with the respondents.

10. The applicant has prayed for pay and allowances as admissible to a regular peon with effect from 21.5.1985 and has relied on various pronouncements of the Supreme Court in connection with the principle of 'equal pay for equal work'. It is not in dispute that the applicant first worked in a leave vacancy, then on the post of a waterman and then against a regular post of peon created in connection with an additional Bench in the Tribunal pending regular appointment. The respondents have not alleged that the duties performed by the applicant were not either same or similar to those performed by regular incumbents of Group 'D' posts in the Tribunal. It is true that Surinder Singh's case (1986(1)SCC 639) and Dhirendra Chamoli's case (1986(1) SCC 637) had dealt with employees who had worked as casual labourers continuously for a number of years, but the period of service, in our opinion, cannot be the determining factor for application of the principle of 'equal pay for equal work' which flows from the Fundamental Right enshrined in Articles 14 and 16 of the Constitution of India (equality before law and equal protection of law) and the Directive Principles of State Policy as given in Article 39. We, therefore, hold that the applicant is entitled to pay in the relevant pay scale plus dearness allowance as per para 8(5) above for the period of service put in by him under respondent No.3.

11. In view of the above discussion, we hold that the services of the applicant were not wrongly terminated and that he is not entitled to be regularised on the post of peon on the basis of his service put in by him in the office of respondent No.3. The applicant is, however, entitled to 'equal pay for equal work'. His pay for the period of service put in by him with respondent No.3 should be calculated at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day. He will be entitled to one paid weekly off after six days continuous work and also for the days of National Holidays falling on working days on which the applicant would have worked but for the National Holidays on those days. After adjusting the payments already made to him, on daily wage basis, the balance due to him should be paid within two months of the receipt of this order by respondent No.3. The application is thus partly allowed on the above lines. In the circumstances of the case, there will be no order as to costs.


(P.C. JAIN)
MEMBER(A)


(P.K. KARTHA)
VICE CHAIRMAN