

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

(7)

**O.A. No.** 1991/90  
**T.A. No.**

199

**DATE OF DECISION** 14-7-93

Shri Tej Bahadur	Petitioner
Shri R.L.Sethi	Advocate for the Petitioner(s)
<b>Versus</b>	
Delhi Administration	Respondent
	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. J.P.Sharma, Member (Judicial)

The Hon'ble Mr. N.K.Verma, 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. Whether it needs to be circulated to other Benches of the Tribunal ?

**JUDGEMENT (ORAL)**

(Hon'ble Shri J.P.Sharma, Member (J).)

This is an application under section 19 of the Central Administrative Tribunals Act, 1985. The applicant has raised a grievance of verbal termination of his service by the Respondent No.2. The relief prayed by the applicant in this application is that the verbal order of termination w.e.f. 1-2-1988 be declared void and the applicant be treated in continuous service from 1-2-1988 with all consequential benefits granting him temporary status, regularisation and equal pay for equal work. This application was admitted by the order dated 5-10-1990 and interim direction was also issued that the applicant in the meanwhile be considered for engagement as daily wage casual worker in preference to his juniors or fresh recruits, that interim order continued on various dates. A notice was issued to the respondents who contested and opposed the grant of relief prayed for by the applicant.

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We heard the learned counsel for the applicant as none appeared on behalf of the respondents. The counter of the respondents, on record, has been perused and the case is being disposed of on the basis of arguments of the learned counsel for the applicant and the material on record.

2. The learned counsel for the applicant argued that the applicant was engaged initially as Beldar on muster roll w.e.f. 2-9-86 and continued to work as a daily wager upto 23-9-86 @ Rs.15.90 paise per day with usual breaks. This has been substantiated by the learned counsel by a certificate dated 1-9-87 (An.A-2). Thereafter, the applicant appears to have been engaged as a typist on muster roll basis w.e.f. 16-10-86 to 30-4-87 and 2-5-87 to 30-6-87 as a daily wager. This is substantiated by a certificate dated 18-1-88 (An.A-3). It is further stated by the learned counsel that from 16-7-87 to 31-1-88 he was engaged as a typist on muster roll basis as a daily wager and this is substantiated by a certificate dated nil (An.A-4). On the basis of above intermittent engagement as a typist on daily wages the contention of the learned counsel is that since he has put in more than 240 days of work in a calendar year, he acquired temporary status and his service should not have been ceased when juniors to him were allowed to continue. The learned counsel has also relied on a decision of the Hon'ble Supreme Court in the case of Parkash Chand & Urs. Vs. Delhi Administration which pertains to work charge employees of CPWD on daily wages and the Hon'ble Supreme Court has directed vide writ judgement dated 31-10-88 in the petition No.253 of 1988 that the respondents to frame a scheme for regularisation

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of services of those persons who have put in more than one year of service. However, in the reply the respondents have denied in para 4.1 the earlier service rendered by the applicant and only verified the service as typist on daily wages from 15-7-87 to 31-1-88. The respondents have further stated in the introduction to the counter that the applicant himself deserted the service by not attending to his duties after 31-1-88. The respondents have also taken plea that the application is barred by limitation as a challenge has been made to verbal orders of termination which has come into effect w.e.f. 1-2-1988. The respondents have also denied receipt of any representation alleged to have been made by the applicant on 5th June, 1989 and annexed with the application as An.A-1.

3. We have given a careful consideration to the arguments of the learned counsel and we find the present application has been filed with a considerable delay. According to the averment in the application the services of the applicant ceased w.e.f. 1-2-1988. The first representation had been made as alleged on 5-6-89. This delay in making representation to the authorities concerned has not been explained either in the original application or during the course of arguments by the learned counsel. The applicant at the most could have come within 1½ year from the date of alleged order of termination. This application is filed in October, 1990. The application is therefore not within limitation as provided under section 21 sub section (1) of the

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Central Administrative Tribunals Act, 1985. Ever since the application has been admitted, we have also been considering the case of the applicant on merits.

4. It cannot be disputed that a person who has worked for about 240 days in a calendar year may acquire a status and as per precedence and various judgements of the Hon'ble Supreme Court, such persons should not be thrown away unless their initial appointment is within a set of recruitment rules. For the post of casual labour, there are no recruitment rules and they are inducted in service on the availability of the work originally being done by labourers. For the post for which the applicant wants his retention and regularisation i.e. a class III post of a typist, there are definite recruitment rules. It is not the averment of the applicant that he was sponsored through Employment Exchange and has ever undergone pre-appointment tests. Such a person who has been engaged time and again in the event of exigency of service has no vested right to claim his retention and regularisation on a post where appointments are made on the basis of a set of recruitment rules.

5. Even giving a considered, sympathetic approach to the case of the applicant, it is not explained as to why when he was ceased from service w.e.f. 31-1-88, he did not assail his grievance departmentally or for a judicial review. The case of the respondents, therefore, that he deserted the service cannot easily

be brushed aside in the light of the vague, cryptic reply given to the counter by a rejoinder. The rejoinder only reiterates again the averments made in the original application and does not substantiate the denial of the various points raised in the counter by the respondents.

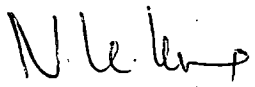
6. Merely because a person has worked for 240 days as a typist as a daily wager in a particular calendar year would not give to a person such right of regularisation or appointment ~~denors~~ the rules.

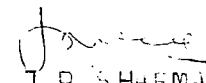
7. If the applicant has deserted himself, he cannot now claim that his services have been terminated by a verbal order.

8. We have carefully gone through the law referred to by the applicant in the case of Parkash Chand. That case particularly applies to the CPWD employees who are engaged on the CPWD manual as work charge employees. The case of the applicant is totally different and he cannot get any benefit of that judgement.

9. In view of the above facts and the circumstances, the application is barred by limitation and, therefore, is dismissed.

The parties shall bear their own costs.

  
( N.K. VERMA ) 14.7.93  
Member (A)

  
( J.P. SHARMA )  
Member (J) 14.7.93