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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A.149/91

Date of Decision: 8-11-91

Shri Raj Ballabh Das

Applicant

Shri T.C. Aggarwal

Counsel for the Applicant

Vs.

Union of India & Ors.

Respondents

Shri P.H. Ramchandani

Counsel for the Respondents

CORAM:

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

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

This OA has been filed by Shri Raj Ballabh Das, a Casual Labourer working with the Chief Engineer, Akashvani and Doordarshan, Jamnagar House, New Delhi, under section 19 of the Administrative Tribunal Act, 1985, against the failure of the respondents to regularise him and for issuing directions to the respondents not to terminate his services.

2. The application was filed on 17.1.91. On that date, the Tribunal passed an ex parte interim order directing that the services of the applicant shall not be terminated and that his services shall not be replaced by appointing fresh recruits. The interim order was thereafter continued till the case was finally heard on 15.5.91 and orders were reserved thereon.

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3. The applicant has stated that he has been serving Government of India in different spells but his services were terminated from time to time due to want of sanction/post. The service rendered by him is as follows:

- (1) Sports Authority of India May to July 1986
- (2) Chief Controller of Accounts
Central Board of Excise
and Customs, A.G.C.R. Bldg.
New Delhi 16.7.86 to 31.10.86
- (3) Private Organisation 1.11.86 to 30.9.89
- (4) Directorate of Advertising
& Visual Publicity
(Ministry of Information
and Broadcasting) 1.10.89 to 15.1.90
- (5) Doordarshan 16.2.90 to 31.3.90
- (6) Chief Engineer(North Zone)
Akashvani & Doordarshan,
Jammnagar House, New Delhi 17.4.90 to 30.9.90
again from 1.1.91 to-date.

4. The applicant has stated that the respondents took regular work of a Class-IV employee from him but failed to get a post created as per directive of the Department of Personnel vide their O.M. dated 7.6.88. Referring to the scheme prepared by that Department for regularisation of the casual workers, he claims to be eligible, if artificial breaks in his service are ignored and sundays and other holidays are counted. He has prayed, that the respondents be restrained from terminating his services and be directed to regularise him as a Class-IV employee with all the consequential benefits and to pay him arrears pay for artificial breaks.

5. The respondents have stated that the applicant has not produced any proof of his service with other departments of Government of India and that his spell under a private employer is of no relevance at all. He was merely engaged in their office from 17.4.90 to 30.9.90 for seasonal work of filling water in the coolers and again for a short period

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from 1.1.91 for cleaning, arranging official records and shifting furniture etc. when some electrical works were being carried out by the C.P.W.D. They have denied that he has been given any artificial breaks and have stated that even if the weekly offs are reckoned, he does not complete 240 days in any of the two years i.e. in 1990 and 1991. No casual labour junior to him has been retained nor is there any move for fresh recruitment in place of the applicant. They admit having sent requisition to the Employment Exchange for filling up the regular posts of 4 Khalasis of which one is reserved for Scheduled Caste candidate. According to them, the applicant cannot be considered for this post, as his name has been sponsored only for casual labour by the Kamla Nagar Employment Exchange and he does not fulfil the qualifications for the post of Khalasi.

6. During the hearing on 31.1.91, the learned counsel for the respondents pleaded that the applicant was continuing in service only by virtue of stay order granted by this Court even though there was no vacancy. The services of all other casual labourers have been dispensed with.

7. We have gone through the records of the case and heard the learned counsel for both parties. The applicant has relied on a number of cases decided by this Tribunal and various Courts and we have duly considered them.** The Tribunal had directed in Raj Kamal Vs. Union of India, 1990(2) SLJ 169, that absorption of casual labour should be on the basis of total number of days worked by them; those who have worked for 240/206 days (in case six days/ five day week respectively) in each of the two years prior to 1988 being given priority over the others. It is clear that the applicant does not come in this category. The respondents have stated that he has worked only for 127 days
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in 1990 and 25 days in 1991. We are, however, unable to agree with the respondents that he cannot be considered for the post of Khalasi along with others, as he has been sponsored by the wrong Employment Exchange. In fact, this Tribunal has held in case of Durga Prasad Tewari Vs. Union of India (1990(3) SLJ CAT 94) that regularisation of the casual labourers should be considered irrespective of the fact whether the applicants have been sponsored by the Employment Exchange. The applicant also claims to fulfil the age and educational qualifications prescribed for the post of Khalasi. He would be entitled to relaxation of age to the extent of the service put in by him as casual labourer.

7. In the conspectus of the facts and circumstances of the case, the application is disposed of with the following directions:-

- 1) The respondents shall consider the case of the applicant along with other candidates for selection to the post of Khalasi.
- 2) The respondents shall give relaxation in respect of age to the extent of service put in by him as casual labourer.

3. The services of the applicant shall not be terminated till the selection of a suitable person as Khalasi is made. Even thereafter, the applicant shall be accommodated in any vacancy of casual labourer, so long as vacancy exists and his services shall not be replaced by a person with lesser length of service. The interim order passed on 17.1.91, as modified above, is made absolute.

There will be no orders as to cost.

B.N. DHOONDIYAL
(B.N. DHOONDIYAL)
MEMBER (A)

8/1/91
(P.K. KARTHA)
VICE CHAIRMAN (J)

** Cases relied upon by the applicants:

1. Shivaji Rao Hitankar Patil Vs. Mahesh Madan Gowari AIR 1987 SC 294
2. Dr. (Mrs) Premlata Choudry Vs. U.O.I-1987(3) SLJ 569(CAT) ATR 1988 (1) CAT 196.
3. Shri Surinder Singh & Ors. Vs. U.O.I. AIR 1986 SC.584
4. Shakuntala Devi Vs. Secy. Dept. of Food. 1990(3) SLJ (CAT) 408.