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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA No. 234/91

DATE OF DECISION 8-11-91

Shri Bhopal Singh - Applicant
Shri O.P. Saxena - Advocate for the applicant.
Versus
Union of India & Ors - Respondents.
Shri A.C. Garg - Advocate for the Respondents.

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

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

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

JUDGEMENT

(OF THE BENCH DELIVERED BY SHRI B.N. DHOUNDIYAL, HON'BLE MEMBER(A))

This OA has been filed by Shri Bhopal Singh under Section 19 of the Administrative Tribunal Act, 1985 against the impugned order dated 11.12.90 terminating his services as a Driver in Delhi Administration after he had worked for a period of one year and eight months.

2. According to the applicant, he joined as Driver in the office of Deputy Commissioner, Delhi on daily wage basis in May 1988. After each spell of 90 days, one day break was given to him and he then continued in service and last such appointment was given for the period from 31.10.90 to 31.12.90. The impugned order was issued on 27.12.90 terminating his services w.o.f. 31.12.90. On the same date, the department invited applications to fill up the posts of drivers. The applicant has prayed that the impugned order dated 27.12.90, terminating his services w.o.f. 31.12.90 be set aside and quashed and the respondents be restrained ^{to} ^{by} from employing any outsiders as drivers and ~~directed~~ to absorb him as a Driver on regular basis against the existing vacancies.

3. The respondents have contended that the applicant was merely working as a daily wageer and later on he was appointed on adhoc basis for the post of driver. The recruitment rules prescribed the minimum qualification as

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matriculation with 2 years experience of licenced driver of light motor vehicles. The post is to be filled up first by promotion from qualified class IV employees. The applicant does not possess necessary qualifications for being considered for appointment as a driver either by way of direct recruitment or by way of promotion. He was not recruited through the Employment Exchange.

4. He have gone through the records of the case and heard the learned counsel for both the parties. It is now well settled that the artificial and technical breaks in service given to the casual workers should be ignored for calculating their length of service. The Supreme Court in Bhagwan Dass and Ors. Vs. State of Haryana and Ors. (AIR 1987 SC 2049) had held that such technical breaks given for a limited purpose be disregarded. A similar view has been taken by the various benches of this Tribunal in a number cases like Sangoeta Marang & Ors Vs. Delhi Administration and Ors, Dr (Mrs) Prem Lata Choudhuri Vs. Delhi Administration & Ors in OA 707/89 decided on 16.8.90 by a bench in which one of us Shri P.K. Kartha, was a party.

5. The applicant has been working continuously from May 1988 till his services were terminated on 31.12.90. He was given an adhoc appointment in a regular pay scale of Rs.950-1500. In our opinion, so far as the rights of the applicants under Articles 14 and 16 are concerned, the procedure of sponsorship through Employment Exchange cannot be regarded as mandatory. As regards the educational qualifications, it has been held by the Supreme Court in case of Bhagwati Prasad Vs. Delhi Mineral Development Corporation (AIR 1990 (SC) 371) that "once appointments of petitioners were made as daily rated ^{AW} workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in respect of posts on the ground that they lack the prescribed educational qualification. As regards the practical experience, the applicant holds a licence for driving motor vehicles and had been sent for trade test to Principal, Government Training School, Sahadra vide Order dated 13.1.89 which he had presumably passed.

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6. In the facts and circumstances of the case, we hold that it would be just and proper if the applicant is treated at par with other class IV employees who are eligible for the post of Drivers. The application is therefore disposed of with the

following orders and directions:-

- (1) The impugned order terminating the adhoc service of the applicant u.o.f. 31.12.90 issued on 27.12.90 is hereby set aside and quashed.
- (2) The applicant shall be reinstated on the post of driver. In the circumstances of the case, we do not order payment of back wages.
- (3) The applicant be considered for regularisation by the DPC along with other class IV employees. His case for regularisation shall be considered and final orders issued within a period of 3 months from the date of communication of this order.

7. There will be no order as to costs.

S.N. Dhoundiyal
(S.N. DHOUNDIYAL)
Member (A)

8/11/91

P.K. Kartha
(P.K. KARTHA)
Vice-Chairman (J)

8/11/91