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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * *

Date of Decision: 12.02.93.

OA 3022/91

KUNWAR PAL

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN.

HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A).

For the Applicant

... SHRI S.S. TIWARI.

For the Respondents

... MRS. RAJ KUMARI CHOPRA.

J U D G E M E N T

(DELIVERED BY HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A).)

The applicant is aggrieved by impugned orders dated 6.11.91 and 12.11.91 whereby he has been informed that he is not eligible to be considered for regularisation.

2. According to the applicant, he has worked as muster roll casual labourer (Mazdoor and Plumber) from 7.12.81 to 9.1.87 for a total number of 274 days as per certificate issued by A.F. Palam on 20.5.85 (A.E). He has also been given service certificates for different spells by the concerned officers. Though juniors have been regularised

and though he had furnished the information required by the respondents vide their letter dated 22.10.91, the respondents have refused to regularise his services on the ground that he has not completed 240 days service after being sponsored by the Employment Exchange. He has prayed that the impugned orders dated 6.11.91 and 12.11.91 be set aside and quashed and he be given the same treatment as his juniors and be regularised immediately.

3. On 20.12.91, this Tribunal passed an interim order directing the respondents to provisionally consider the case of the applicant for regularisation as Mazdoor along with other persons. This would be subject to the outcome of the present application. This interim order still continues.

4. The respondents have stated that though the applicant worked on muster roll in different spells, he had not completed 240 days service after being sponsored by the Employment Exchange and was, therefore, ineligible for regularisation. Only those who had served for more than 240 days after being sponsored by the Employment Exchange have been regularised. The certificates submitted by the applicant cannot be regarded as authentic in the absence of any muster roll or case number. They have not been issued on behalf of the Head of the Office and seem to have been issued by different officers in their personal capacity.

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5. We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has drawn our attention to the judgement of another Bench of this Tribunal in case of Swaminath Sharma and Ors. Vs. UOI & Ors. (ATR 1988 (1) CAT 84) wherein it has been held that in calculating the total period of service for the purpose of regularisation of service rendered both before and after sponsorship by the Employment Exchange has to be taken into account. The learned counsel for the respondents has, however, controverted this by citing the judgement of the Supreme Court in case of Piara Singh Vs. UOI (1992 (2) SCALE 384) wherein stress has been laid on sponsorship by Employment Exchange to prevent backdoor entry. ^{Sw} ~~The judgement of the~~ ^{Sw} Supreme Court in case of Piara Singh has considered this question in detail and have expressed their views as under :-

"14. The next question is whether the orders issued by the two Government were arbitrary and unreasonable in so far as they prescribed that only those employees who had been sponsored by Employment Exchange should alone be regularised. In our opinion, this was a reasonable and wholesome requirement designed to curb and discourage back door entry and irregular appointments. The Govt. orders say that all those who have been sponsored by Employment Exchange or have been appointed after issuing a public advertisement alone should be regularised. We see no unreasonableness or invalidity in the same. As stated above, it is wholesome provision and ought not to have been invalidated. Moreover, as pointed out hereinbefore, it is not found by the High Court that the writ petitioners were appointed only after obtaining a non-availability certificate from the Employment Exchange. The decision relied upon by the High Court does not say that even without such a certificate from Employment Exchange, an appointment can be made or that such appointment would be consistent with the mandate of Articles 14 and 16."

6. Following the ratio of the above judgement we hold that the respondents were within their rights to lay down the condition that only those who have served for 240 days after being sponsored by the Employment Exchange are to be regularised. However, in the same judgement the Hon'ble Supreme Court have observed that an adhoc/ temporary employee should not be replaced by another adhoc or temporary employee, he must be replaced by only a regularly selected employee. This was held to be necessary to avoid arbitrary action on the part of the appointing authority. The following observations made in case of worked charged employees or casual labour are relevant :-

"So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authority ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job."

7. In the light of above observations, the application is disposed of in terms of following orders or directions :-

- i) Since the applicant has been working with the respondents since 1981, his case for regularisation shall be considered under a special scheme ^{to be} prepared _{by}

for similarly situated persons. If necessary, he may be registered with the Employment Exchange prospectively and though he may be regularised after completion of 240 days after such registration he may be given seniority according to his length of service on regularisation.

- ii) The services of the applicant shall not be replaced by another temporary or casual employee. He shall continue to be engaged in preference to those with lesser length of service and outsiders.
- iii) There will be no order as to costs.

B. N. Dhoundiyal
 (B.N. DHOUNDIYAL) 12/2/93
 MEMBER (A)

P. K. Kartha
 (P.K. KARTHA)
 VICE CHAIRMAN