

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No:375/91

NEW DELHI THIS THE 13TH DAY OF NOVEMBER, 1995.

HON'BLE MR.N.V.KRISHNAN, ACTING CHAIRMAN
HON'BLE MR.D.C.VERMA, MEMBER(J)

Shri Narendra Kumar
S/o Shri Narayan Singh
R/o House No.13
Village Dabri,
Post Office Palam
New Delhi-45

Applicant

(BY ADVOCATE SHRI ASHOK AGARWAL)

vs.

1. Union of India
through Secretary
Ministry of Information & Broadcasting
Akashwani Bhawan
New Delhi-110001.

2. The Chief Engineer(North Zone)
Akashwani and Doordarshan
Jamnagar House, Shahjahan Road
New Delhi.

Respondents

(BY SENIOR ADVOCATE SHRI P.H.RAMCHANDANI)

ORDER (ORAL)

Shri N.V.Krishnan:

The applicant was engaged as a casual labour in the Doordarshan under the second respondent for the first time on 1.5.1989. He met with an accident on 27.6.1989 as a result of which he had to be hospitalised. On discharge, he was allowed to resume duties on 1.1.1990. He was refused work on 7.6.1990. However, when he made a representation, he was reinstated on 12.7.1990. He continued till 1.12.1990 when he was finally refused work which is a grievance in this OA.

2. The applicant has contended that he is a workman and the respondents are an industry and they have violated the provisions of Section 25 F,G & H of the Industrial Disputes Act, 1947. On these submissions, the applicant claims the following reliefs:

(a), the impugned action of the respondents in terminating the services of the applicant w.e.f.1.12.1990 be held illegal invalid and unconstitutional.

(b) the respondents may be directed to reinstate the applicant in service with full back wages and continuity in service.

3. The respondents have filed a reply. It is stated therein that the question whether the All India Radio and Doordarshan are industry is pending before the Supreme Court of India and in this connection, an order dated 17.4.1989 (Annexure-1) passed in SLP No.3162 of 1987 against the judgement dated 13.11.1986 of the High Court of Madhya Pradesh in MP No.1183/82 has been filed.

4. The respondents state that the applicant was only a casual labour and he was engaged so long as the work was available. He has no right to be regularised as he has not completed 240 days of service in two consecutive calendar years.

5. We have heard the learned counsel for the parties today. In answer to a query as to whether the applicant ought not have sought relief from the Industrial Tribunal under the provisions of the Industrial Disputes Act as that seems to be the decision of a five-Member Larger Bench of this Tribunal in **A.Padmavally and others v.CPWD & TELECOM(Full Bench Judgements of Central Administrative Tribunal-Volume II page 334)**, the learned counsel for the applicant submitted that in the light of the judgement of the Supreme Court in **Syed Azam Hussaini v.The Andhra Bank(JT 1995(2) S.C.37)**, this Tribunal is competent to adjudicate upon all service matters covered by the Industrial Disputes Act. He further drew our attention to a decision dated 24.12.1991 rendered by a Division Bench of the Principal Bench in OA No.1154/91 and batch of cases(**Shri P.Munu Swamy v. Union of India through the Director General,All India Radio, New Delhi**) in which in similar circumstances, the OAs were disposed of by giving suitable

directions to the respondents. The learned counsel for the applicant submitted that the applicant is at least entitled to similar directions in this case.

6. On behalf of the respondents, the learned counsel submitted that it is too early to hold that the All India Radio and Doordarshan are industry. He further submitted that the department has evolved a scheme pursuant to certain directions issued by this Tribunal in similar cases. That scheme contemplates the conferal of temporary status on casual labours who were in engagement of the respondents as on 1.9.1993 if they had rendered a certain length of service in the immediate preceding year. He contended that the case of the applicant is not covered by that scheme also.

7. In answer to our query why this OA should not be disposed of on the lines OA No.1154/91 and batch of cases was disposed of on 24.12.1991, the learned counsel for the respondents submitted that he has no objection if such an order is passed keeping note of the scheme prepared by them.

8. In the view we are taking in the matter it is not necessary to pursue the question whether the applicant should have approached the Industrial Tribunal for reliefs. In an application like this where a ground is made that the employer is an industry and the applicant is a workman, these averments will have to be established convincingly and not merely by assertions to that effect. We are, therefore, of the view that the applicant has not established any claim to be governed by the Industrial Disputes Act.

9. We are, however, satisfied that the directions issued by a Division Bench of the Principal Bench in OA No.1154/91 and batch of cases will certainly come to the aid of the applicant. In our opinion, there is no contradiction between the directions given therein and the

scheme to which a reference was made by the learned counsel for the respondents. The scheme was prepared, as mentioned by him, in terms of certain directions given by this Tribunal. That will operate in its own field. However, if nevertheless the respondents still feel the need to engage casual labour, the directions given in the above OA will have to be complied with. We are, therefore, of the view that in this case also similar directions will have to be given.

10. Accordingly, we dispose of this OA with the following orders and directions:-

- (i) The respondents are directed to prepare a list of casual labourers engaged in the various offices located in Delhi and elsewhere from time to time through Employment Exchange or otherwise. Whenever they need the services of casual labourers they should be engaged from the said list, preference being given to those who have put in longer period of service than the others. The broken periods of service shall not be reckoned for the purpose of determining the total length of service.
- (ii) We hold that the practice of disengaging casual labourers and engaging fresh recruits through Employment Exchange is not legally sustainable and disapprove the same.

We make it clear that the above directions are subject to the provisions of the scheme evolved by the respondents.

11. We further direct that in so far as the eventual regularisation is concerned, the respondents should consider the case of the applicant in accordance with law and more particularly with reference to the provisions contained in the scheme mentioned above.

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12. The respondents are further directed to give a suitable reply to the applicant about his place in the list which they are required to prepare under direction No.(i).

13. The OA stands disposed of as above with no order as to costs.


(D.C.VERMA)
MEMBER(J)


(N.V.KRISHNAN)
ACTING CHAIRMAN

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