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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2080/2004

This the 12th day of October, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI JUSTICE M. A. KHAN, VICE-CHAIRMAN (J)

Sunil Kumar Saxena S/O Chander Prakash Saxena,
C/O F. S. Raghav,
Cokkar Modal, Sahibabad,
Distt. Ghaziabad (UP).

... Applicant

(By Shri S. K. Gupta, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chief Commissioner;
Income Tax Office,
I.P.Estate, New Delhi.
3. Income Tax Officer (Exemption),
Trust Ward-I, Income Tax Office,
I.P.Estate, New Delhi.

... Respondents

(By Shri V. P. Uppal, Advocate)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

Applicant claims to have been working with respondents since 27.12.2001 and is stated to have completed more than 240 days in two consecutive years. He claims that he is eligible for consideration for regularization in terms of OM dated 7.6.1988.

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2. The learned counsel of applicant stated that although applicant has no documents to prove that he was employed in the office of respondents, however, Annexure A-1 colly. goes to show that applicant was being called in the office of respondents to work on holidays on various occasions. Thus, he had completed more than 240 days between 27.12.2001 and 26.12.2002, and another set of 240 days from 27.12.2002 to 26.12.2003. Thus applicant has claimed consideration for regularization of his services under the OM dated 7.6.1988. The learned counsel pointed out that though respondents had been directed by the Court to produce records relating to attendance of applicant during the years 2001 and 2002, respondents have not produced any such records.

3. The learned counsel contended that applicant should be considered for regularization in terms of paragraph 3.2 of OM dated 26.10.1984, paragraph 1(x) of OM dated 7.6.1988 and paragraph 10 of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 (hereinafter referred to as the 1993 Scheme). These provisions read as follows :

Paragraph 3.2 of OM dated 26.10.1984:

"A casual labourer may be given in the benefit of 2 years' continuous service as casual labourer if he has put in at least 240 days (206 days in the case of offices observing 5 days week) of service as a casual labourer (including broken periods of service) during each of the two years of service referred to above."

Paragraph 1(x) of OM dated 7.6.1988:

"(x) The regularization of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularization, a casual worker may be given relaxation in the upper age-limit only if at the time of initial recruitment as a

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casual worker, he had not crossed the upper-age limit for the relevant pos.

Paragraph 10 of the 1993 Scheme:

“10. In future, the guidelines as contained in this Department's OM, dated 7-6-1988, should be followed strictly in the matter of engagement of casual employees in Central Government offices.”

4. On the other hand, respondents have stated that applicant was never employed in the office of respondents on casual basis w.e.f. 27.12.2001. The learned counsel of respondents stated that applicant may have been employed privately by respondent No.3 for which no liability devolves upon respondents. The learned counsel also stated that such persons cannot seek regularization as held in (2006) 4 SCC 1 – *Secretary, State of Karnataka & Others v Umadevi (3) & Others*, a five-Judge Bench decision of the Hon'ble Apex Court. However, the learned counsel admitted that respondents have not been in a position to produce records regarding employment of applicant.

5. We have considered the respective contentions of parties, material on record as also the related case law.

6. Under 26.10.1984 OM a casual labour could be given benefit of two years continuous service as casual labour if he had put in at least 240 days (206 days in the case of offices observing five days week) as casual labourer during each of the two years of service. DOP&T OM dated 7.6.1988 provides that regularization of the services of casual workers was to be governed by instructions issued by DOP&T according regularization in upper age limit, if at the time of initial recruitment he had not crossed the upper age limit.

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7. Applicant has not been able to produce any document relating to his appointment. Respondents have also not produced any records. As such, an adverse inference has to be drawn against respondents that as claimed by applicant, he had worked under respondents for 240 days between 27.12.2001 and 26.12.2002 and for another 240 days between 27.12.2002 and 26.12.2003. He could have been considered for regularization in terms of OM dated 26.10.1984 read with OM dated 7.6.1988. However, having not been considered as such till promulgation of the 1993 Scheme, he could not derive any benefit from memoranda dated 26.10.1984 and 7.6.1988. He could be considered only under the 1993 Scheme, in case he had been in employment on 1.9.1993 as stipulated in the Scheme. However, he was not in employment on that date. As such, the provisions of the 1993 Scheme cannot be applied to him, which was a one-time measure.

8. We may note that in *Mahendra L. Jain & Others v Indore Development Authority & Others* [2005 (1) SLR 39], the Hon'ble Supreme Court had held that daily wagers in absence of statutory provisions in this behalf could not be entitled to regularization. The process of regularization involves regular appointment which can be done in accordance with the prescribed procedure. The 1993 Scheme envisaged that casual labourers in employment on 1.9.1993 could be accorded temporary status on fulfilment of certain conditions. In 2002 (4) SCALE 216 – *Union of India & Another v Mohan Pal, etc. etc.*, it was made clear that the 1993 Scheme was not an ongoing scheme and the casual workers could be conferred temporary status if they were in employment on 1.9.1993 and had rendered continuous service of at least one year, i.e., at least 240 days (206 days in

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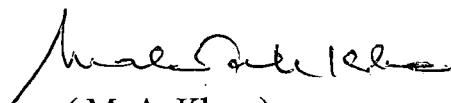
the case of offices observing five days week). Memoranda dated 26.10.1984 and 7.6.1988 cannot be read in isolation and have to be read along with the Scheme notified by the DOP&T vide OM dated 10.9.1993 particularly as the 1993 Scheme is also in vogue on the same subject which has diluted the purport of earlier OMs dated 26.10.1984 and 7.6.1988. OM dated 7.6.1988 has also to be read as a one-time measure at par with the 1993 Scheme as held in *Mohan Pal* (supra). Reading OM dated 7.6.1988 in isolation and not in harmony with the 1993 Scheme, keeping in view the law laid down in *Mohan Pal* (supra), would tantamount to negation of law which is binding under Article 141 of the Constitution of India. Furthermore, in *Umadevi (3)* (supra) the issues of absorption, regularization of *ad hoc* employees appointed/recruited and continued for long in public employment *de hors* the constitutional scheme of public employment, have been settled once for all. It has been held therein that a contractual appointment comes to an end at the end of the contract, an appointment on daily wages or casual basis comes to an end ^{lb} ~~comes to an end~~ ^{lb} when it is discontinued, and a temporary appointment comes to an end on the expiry of its term. No employees so appointed can claim to be made permanent on the expiry of their appointments. When regular vacancies in posts are to be filled up, a regular process of recruitment or appointment has to be resorted to as per the constitutional scheme, and cannot be done in a haphazard manner based on patronage or other considerations. It was also held therein that there is no legitimate expectation to be absorbed or regularized in public employment on basis of such relief having been granted to similarly placed employees under certain orders of Court. OM dated 26.10.1984 as well as OM dated 7.6.1988 cannot be read in isolation particularly when the

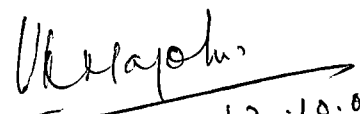
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scheme for grant of temporary status and regularization has been notified by DOP&T OM dated 10.9.1993 which introduced the concept of temporary status before undertaking the process of regularization. After a detailed discussion of various aspects of the matter in OA No.409/2005 – *Prem Kumar & Others v Union of India & Others* this Tribunal held on 5.9.2005 that a cumulative reading of OM dated 26.10.1984 and OM dated 7.6.1988 and the 1993 Scheme would indeed go to show that it was not a mandate of these OM's that whosoever and whenever completing 240/206 days of service in two consecutive years should be regularized. OM dated 7.6.1988 would show that if the eligible casual workers could not be adjusted against regular posts and their further retention was not considered necessary, they were to be discharged from service. Obviously, these OM's had been a one-time exercise and not an ongoing process. It was not the object and the purport of the said OM's that as and when the persons complete 240/206 days in two consecutive years they would have to be regularized by the Government as a matter of right. The cumulative reading of OM's dated 26.10.1984 and 7.6.1988 indicates that they do not create any vested rights for regularization. It merely enables the organization to consider them for regular appointment to Group 'D' posts, if they are otherwise eligible. In other words, it could not be treated as an ongoing process and has to be restricted to a one-time measure alone.

9. In result, finding no merit in the OA, it is dismissed.


(M. A. Khan)
Vice-Chairman (J)


(V. K. Majotra) 12.10.06
Vice-Chairman (A)

/as/