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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2494/2004

New Delhi, this the 27th day of May, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

1. Anil Kumar
S/o Shri Ajab Singh,
Village Gamori,
PO Abdulapur,
PS: Bhawanpur,
District Meerut,
Meerut.
2. Shiv Kumar,
S/o Shri Mangat Singh,
R/o P-427 E.W.S.,
Pallavpumar Phase II
Meerut.

..... Applicants.

(By Advocate Mrs. Rani Chhabra)

Versus

1. Union of India
through its Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Chief Controller General,
Defence Accounts,
R.K. Puram, West Block V,
New Delhi.
3. The Controller of Defence Accounts (Army),
Bevedera comped, Ayub Park,
Meerut Cantt, Meerut.

... Respondents.

(By Advocate Shri R.N. Singh)

O R D E R (ORAL)

This O.A. has been filed by two applicants, who have sought directions to the respondents to regularize their services on Group 'D' post, in accordance with the guidelines issued in Office Memorandum dated 7.6.1988 and not to disengage the applicants. It is submitted by the applicants that they were engaged in June, 1997 and May, 1998, respectively and had already completed 240 days. They had already worked for three years continuously but even though they requested for being absorbed

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and for conferment of temporary status according to the DOP&T Scheme, 1993 but nothing was being done. They filed O.A. 1952/2000 seeking the benefit under the 1993 Scheme. The said O.A. was allowed by directing the respondents to consider granting temporary status to the applicants within three months from the date of receipt of the copy of the order. The respondents filed an MA for clarification of order dated 18.5.2001 but the same was rejected on 1.2.2002. Therefore, applicants filed contempt petition but at this stage respondents filed Writ Petition No. 2183/2002 before the Hon'ble High Court of Delhi, which was pleased to grant stay of operation of the impugned order dated 18.5.2001 vide its order dated 8.4.2002. In the meantime, Hon'ble Supreme Court gave judgment holding therein that the 1993 Scheme is not an on going Scheme but was a one time Scheme applicable to only those casual labourer who were in employment on 1.10.1993 whereas this aspect was not taken into consideration by the Tribunal. Therefore, Hon'ble High Court finally remitted the matter back to the Tribunal to decide the case afresh, that is how O.A. No. 1952/2000 came back to the Tribunal.

2. It is submitted by the applicants that the said O.A. was dismissed as applicants were not working with respondents as on 10.9.1993. Accordingly, the said O.A. was dismissed. They have now filed the present O.A. seeking the benefit of the O.M. dated 7.6.1988 issued by the DOP&T and which is still in existence as is evident from Para 10 of the DOP&T Scheme, 1993 itself which reads as under:

"10. In future, the guidelines as contained in this Departments OM dated 7.6.1988 should be followed strictly in the matter of engagement of casual employees in Central Offices"

They have thus submitted that even if 1993 Scheme is not applicable to them, they would still be governed by the O.M. dated 7.6.1988 and the instructions of 1984 wherein if a casual worker, who has put in 206/240 days, as the case may be, in two consecutive years, is entitled for regularisation. They have also relied on the judgment given in O.A. 104 of 2002 in the case of Ashok Kumar & Ors. Vs. Union of India & Ors. wherein applicants were given the benefit of Scheme dated 7.6.1988. It is submitted by the applicants that since applicants have been working continuously and the work is of perennial nature, they are entitled to get the benefit of the said guidelines. However,



since they have not been given the benefit of O.M. dated 7.6.1988, they have no other option but to file the present O.A.

3. Respondents have opposed this O.A. by submitting that applicants have not approached the Tribunal with clean hands as they have made wrong statement in Para 7 wherein they have stated that "The applicants have not filed any other petition in this Hon'ble Court or any other court for similar relief. At present no matter is pending regarding this relief in any other bench" whereas applicants had earlier also approached this Tribunal by filing O.A. 1952/2000 seeking similar relief which was dismissed by the Tribunal vide judgment dated 22.11.2004 (Annexure R-2). Hence, O.A. is liable to be dismissed on this ground alone. They have further submitted that even otherwise this O.A. is barred by the principle of res judicata and they cannot be allowed to file one after another O.A. for seeking the same relief by referring to different O.Ms.

4. On merits, they have submitted that applicants have not been engaged continuously with the respondents for the past seven years, as stated by the applicants but they were engaged as daily casual labourer for irregular and intermittent nature of work on 24.4.1997 and 18.5.1998, respectively and disengaged on 11.6.2000 as the requirement of such work ceased to exist (Annexure R-1). The Scheme of 1993 is not applicable as applicants were not in employment as on 10.9.1993 nor had completed one year continuous service as on that date which should not be less than 206/240 days. Under the O.M. dated 7.6.1988 of the DOP&T, a casual labourer engaged for regular nature of work for which regular post can be created and who also fulfils other conditions, can be eligible for regularization. Since applicants were engaged only for the work of irregular nature, there was no justification or requirement of their being considered for appointment against Group 'D' posts. They have thus prayed that the O.A. may be dismissed.

5. I have also heard ^{both B} the counsel and perused the pleadings as well. It is correct that in Para 7, applicants have stated that they had not filed any other O.A. seeking the same relief even though they had filed O.A. 1952/2000 in this Tribunal seeking regularization but it cannot be stated that they have suppressed the fact because in the body of O.A. they have ~~also~~ dealt with the said O.A. in detail. The O.A., therefore, cannot be rejected, on the ground that they have suppressed the material facts or for

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making a wrong statement in Para 7 of the O.A. This contention of the respondents is, therefore, rejected.

6. However, it is seen that when applicants had approached this Tribunal earlier in O.A. 1952/2000, the Tribunal had dealt with the point of not only 1993 Scheme but also of instructions dated 7.6.1988 because counsel for the applicants had also made an alternative prayer for being considered for regularization under the instructions dated 7.6.1988 issued by the DOP&T. In para 12 of the judgment dated 22.11.2004, this Tribunal observed as follows:

"12. The learned counsel for the applicants, however, made an alternative prayer stating that in case the applicants were not eligible for conferment of temporary status under the 1993 Scheme, they should be considered for regularization under the instructions dated 7.6.1988 issued by DOP&T. The learned counsel for the respondents opposed this plea by stating that this prayer has not been made in the O.A. and as such cannot be raised at this stage. Besides, the question whether the instructions dated 7.6.1988 are applicable for conferment of temporary status or not, has been considered and dealt with in the order dated 29.10.2004 passed by this Tribunal in OA No. 981/2004 in the case of Titu Ram & Others Vs. UOI & Ors. in which a view has been taken that there is no scheme after 1993 under which a casual employee who has been engaged after 10.9.1993 can be regularized or conferred temporary status. In view of the above, the learned counsel for the applicants stated that she will not like to pursue this prayer in so far as the applicants in OA No. 1952/2000 are concerned".

It is thus seen that applicants were not in employment with the respondents on 10.9.1993. Counsel for the respondents had, therefore, frankly conceded that they were not governed by the Scheme, as such not eligible for conferment of temporary status under the DOP&T Scheme issued vide Circular dated 10.9.1993. As far as the contention with regard to the instructions dated 7.6.1988 is concerned, this Court had observed that the point with regard to 7.6.1988 instructions has already been dealt with in the order dated 29.10.2004 passed by this Tribunal in O.A. No. 981/2004 in the case of Titu Ram & Ors. Vs. UOI wherein it has been held that there is no Scheme after 1993 under which a casual employee who had been engaged after 10.9.1993 can be regularized or conferred temporary status.

7. From the perusal of above judgment, two things are clear that counsel for the applicants did advance an alternative argument with regard to the instructions dated 7.6.1988 which was ultimately given up by the counsel without taking any liberty to file another O.A. and that the contention with regard to 7.6.1988 instructions was held to be not applicable as decided in the case of Titu Ram & Ors. Vs. Union of India & Ors. The



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very fact that counsel for the applicants had already raised this contention in the earlier OA as well which was not accepted by the Court and, in fact, given up by the counsel for the applicants on her own without taking any liberty to file another O.A., would make the said judgment final as the said judgment has not been challenged by the applicants in Hon'ble High Court of Delhi nor can the applicants be allowed to file yet another O.A. seeking the same relief of regularization by relying on the same instructions dated 7.6.1988 by filing another O.A. After all, proceedings must be given finality at some stage. When applicants had filed their O.A. earlier for seeking the benefit of 1993 Scheme, the instructions of 7.6.1988 were very much available even at that time. Therefore, if they wanted, they should have taken that also as a ground in the first O.A. itself. Applicants cannot be allowed to refer to just one O.M. in the case and if that is defeated to file another case by referring to another earlier instruction which was already in the knowledge of applicants as that would be barred by principle of constructive res judicata.

8. Counsel for the applicants has now relied on judgment dated 22.11.2004 given in O.A. No. 104/2002 but even that was also available on the date when earlier O.A. was argued because the judgment in the case of Ashok Kumar and Ors. Vs. Union of India & Ors. in OA 104/2002 is dated 29.1.2003 whereas applicant's first O.A. was decided on 22.11.2004. Therefore, if at all they wanted to rely on the said judgment, it should have been placed before the Tribunal at the time when OA 1952/2000 was being argued. Not having done so, it is not open to the applicants to now rely on the said judgment by filing another O.A.

9. In view of the above discussion, I find the present O.A. is not maintainable and cannot be entertained as the issues which are being raised now were raised even in the earlier O.A. which were not accepted and while giving up the claim, no liberty was sought by the applicants to file another O.A. O.A. is accordingly dismissed. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER (J)