

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3062/2004

New Delhi, this the 6th day of September, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri Bal Singh S/o Shri Mangte
R/o Vill. Surani, P.O. Daurale
Distt. Meerut (U.P.)

.....Applicant.

(By Advocate Shri Surinder Singh with Shri U. Srivastava)

VERSUS

1. Union of India, through
Secretary (Agricultural)
Krishi Bhawan,
New Delhi.
2. Indian Council of Agricultural Research,
Krishi Bhawan, through its Director,
Library Avenue,
New Delhi.
3. Central Potato Research Institute,
Simla Himachal Pradesh, through its
Director.
4. Central Potato Research Station,
Modipuram, through its Scientist Incharge,
Meerut.

....Respondents.

(By Advocate Shri B. S. Mor)

O R D E R (ORAL)

Validity of order dated 15.09.2003 has been questioned in the present OA.

2. On an earlier occasion applicant along with others approached the Allahabad Bench of this Tribunal by instituting OA No.589/2002 which came to be disposed of vide order dated 31.01.2003 (Annexure A-3). Since the applicants had been working for a long time and were in their position on the said date, the Bench of the Tribunal considered it fit and in the interest of justice to direct the respondents not to displace those officials by substituting new faces or by a new set of daily wage casual labourers and accordingly directions were issued to frame some kind of a scheme to ensure that preference is given to those casual labourers who were still working with them or who had already worked with the

respondents, in terms of the law laid down by Hon'ble Supreme Court in *Raj Narain Prasad & Others vs. State of U.P. & Others* [1998 (8) SCC 473] and *Hindustan Machines Tools and Others vs. M. Ranga Reddy and Others* [JT 2000 Supp. 1 SC 267].

3. The contention raised by Shri Surinder Singh, learned counsel appearing on behalf of applicant, is that the applicant has been framed up in an incident, which happened in July, 2003 at Modipuram. It is stated that no proper and regular enquiry had been conducted prior to the passing of impugned order dated 15.9.2003, whereby he was informed that it was not possible to continue in service in view of the threats issued and misbehaving with the officers as well as other labourers. Reliance was placed on (1979) 1 SCC 60 [Town Area Committee, Jaialabad vs. Jagdish Prasad and Others] particularly para (1) to suggest that a full and complete opportunity had to be given to the delinquent employee before any action was taken against him. A reasonable opportunity is a term of well-known legal significance and includes an opportunity given to the employee to cross-examine the witnesses examined against him and to lead defence in support of his version.

4. Shri B.S. Mor, learned counsel appearing on behalf of respondents stoutly opposed the applicant's claim and stated that the applicant did not fulfil the condition of 240 days in two consecutive years and hence question of regularization did not arise. Moreover, there was no regular post against which such casual labourers, like the applicant, had been engaged. It is contended that similarly situated persons like the applicant, who had approached the Allahabad Bench of this Tribunal, four of them instituted OA No.1379/2004 *Prakash & Others vs. Union of India and Others* before the Principal Bench of this Tribunal impugning and challenging the identical OM dated 15.9.2003 and which came to be dismissed vide order dated 30.08.2005. It was further contended that Allahabad Bench in its order cited had given liberty to respondents to displace the applicant and others if they commit any misconduct.

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5. Shri Surinder Singh, learned counsel for applicant contended that since the applicant had been framed up in a police case, in which neither any enquiry nor any proper investigation were carried out by the police, no reliance could be placed on the alleged complaint lodged with the police station concerned. On perusal of the judgement and order dated 30.8.2005 passed in OA No. 1379/2004 rendered by the Coordinate Bench of this Tribunal, I find all these aspects and contentions had been dealt with, considered and stand rejected. That being a judgement of Coordinate Bench is binding upon me in view of the law on "precedent" laid down by the Hon'ble Supreme Court. The reliance placed on *Jagdish Prasad and Others (supra)* is not misplaced and not applicable as in the case the delinquent official had not been given chance for examining witness. What the department did in that case was that a charge-sheet was issued and the explanation was obtained and thereafter it straightaway passed an order of dismissal. In such circumstance, it was held that principles of *audi alteram partem* had to be complied with and a reasonable opportunity was to be afforded to the said respondents therein. In the present case, the applicant is working only as casual labourer and has no right to invoke the principles of Article 311 of the Constitution of India. It would be expedient at this stage to note relevant paras 6 & 17 of the order dated 30.8.2005, in OA No.1379/2004, which reads as under:-

"16. This Very question, whether a daily wager can be terminated on account of accepting bribe without any hearing or holding an enquiry even though he had been working with organization for the last 7 years came up for consideration before Hon'ble High Court of Delhi. The Division Bench after discussing every aspect of the matter held in clear terms that:

- 1. service rules do not apply to a daily wager*
- 2. concept of civil consequences apply only when one holds a post*
- 3. many years of service as daily wager do not amount to regularization*
- 4. a daily wager can be terminated without any hearing*

The facts of present case are fully covered by the judgement as referred to above. It is thus clear that the rights of an employee are protected under the constitution and service rules, only if he holds a post. A person not holding a civil post cannot cling to the rights available to a regular employee.

17. In view of the above discussion, the contentions raised by counsel for the applicant that right of hearing has been violated is not at all sustainable in law. It is also wrong to suggest that Joint

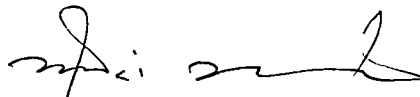
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Director has been judge in his own cause. He is not the only one, who witnessed all this. As explained above, there is sufficient evidence in the files to show that the applicants misbehaved with staff, casual labourers, threatened them all and obstructed the work by resorting to hooliganism, therefore, this contention is also rejected." (emphasis supplied)

6. Following the aforesaid judgements and the order passed in OA No.1379/2004, I find no merit in the present OA and the same is accordingly dismissed. No costs.



(Mukesh Kumar Gupta)
Member (J)

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