

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A No. 1780/2004



New Delhi this the 30 th day of August, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Dinesh Rajak
S/o Shri Ganesh Rajak,
E-351, J.J.Colony,
Inder Puri,
New Delhi-110001

..... Applicant.

(By Advocate Shri P.S. Mahendru)

Versus

1. Union of India
through
The Secretary,
Ministry of Agriculture,
Govt. of India,
Krishi Bhawan,
New Delhi-110001.

2. The Director (Administration),
Directorate of Extension,
Department of Agriculture & Cooperation,
Ministry of Agriculture,
Govt. of India,
Krishi Bhawan,
Pusa,
New Delhi-110012.

.... Respondents.

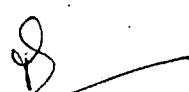
(By Advocate Shri R.N. Singh)

ORDER

By this O.A., applicant has sought a direction to the respondents to,

- (a) reengage the applicant in preference to freshers, outsiders and juniors as per his position in the seniority list;
- (b) confer temporary status and absorption/regularisation as per available vacancies in Group 'D'.

2. The brief facts, as alleged by applicant, are that he was engaged in 1997 as casual labourer after his name was sponsored by Employment Exchange and he was found suitable by a Selection Committee. He worked for 287 days and was disengaged in June 1999 even though the work of casual nature in the posts of painter, packer,



chowkidar, chaprasi, waterman and mali, etc. is available with the respondents and they are engaging fresh faces, who are not even sponsored by Employment Exchange, which is contrary to O.M dated 12.7.1999 and it is being done to deprive the applicant from completing 240 days so that he may not claim regularisation in Group 'D' post.

3. In June 1999, applicant applied for the post of Chowkidar/Chaprasi in response to notice but he was not even considered even though he was eligible. Again in Oct., 1999, applicant's name was sponsored by Employment Exchange against respondent's demand for daily wage labours but respondents engaged fresh faces ignoring applicant's candidature which is absolutely wrong. On 26.2.1999, respondents agains requested the Employment Exchange to forward a panel of suitable candidates for filling the posts of Farash and Chowkidar vide letter dated 01.03.1999. It is submitted by applicant that since discharged Casual Labourer were available, respondents could not have notified the vacancies.

4. In the year 2000, respondents engaged fresh faces viz., S/Shri Anil Kurmar Paswan, Mahesh Kumar, Karam Pal and Raj Narain from 3.3.2000 to 6.6.2000 and S/Shri Rajiv Thapa, Rajiv Kumar, Pradeep Kumar, Deepak Kumar, Satyender Kumar and Niranjan from 7.6.2000 to 31.7.2000, therefore, applicant gave reply on 1.6.2000 for giving him preference over freshers but no reply was given so he filed OA 1448/2000 seeking reengagement in preference to freshers/outsiders without insisting on a fresh sponsorship by the Employment Exchange. The said OA was disposed off on 9.5.2001 (page 15) by directing the respondents to consider the claim of the applicant for reengagement as a casual labourer, subject to availability of work and in preference over freshers / juniors/ outsiders.

5. Inspite of Court's directions since respondents were not reengaging applicants, he filed C.P. No.565/2001.

6. During the pendency of CP, respondents issued seniority list of Casual Labour on 14.1.2002 wherein applicant's name figured at SI No.

1. He was accordingly reengaged and respondents also tendered apology for the delay. Accordingly, CP was dismissed in view of the remedial steps taken by respondents (page28).

7. This order was passed in CP on 20.2.2002 but in spite of this, respondents engaged outsiders directly or through contractor, therefore, he again sent legal notice on 13.11.2003 requesting them to give preference to him. Applicant was engaged from 7.4.2003 to 10.04.2003. Thereafter respondents again stopped engaging him and have engaged S/Shri Vijay Paswan, Rajesh Pal, Laxmi Prasad., Kishan Kumar, Ravinder Mehto, Rajinder Singh, Amit Yadav, Vijay Rai, Sunil



Kumar and Lalit Kumar as waterman even in current season once again bye-passing the applicant. He had thus no other option but to file the present OA.

8. Counsel for the applicant has relied on Scheme dated 10.9.1993 and the judgments given in **Central Welfare Board & Ors. Vs. Ms. Anjali Bepari & Ors.** (JT 1996 (8) SC 1) and **Jag Naresh and Anr. Vs. Union of India & Ors.** (2002 (2) ATJ 53).

9. Respondents have opposed this OA by submitting that applicant has worked for 276 days only from 1997 to 1999 and 235 days from 2000 to 2003. Seniority List was initially issued on 17.4.2002, which was corrected on 19.4.2002, 23.08.2004 based on directions given in OA No. 937/2000, 268/2001, 269/2001, 3101/2002 and MA No. 220/2004 in CP No. 147/2003.

10. Applicant was initially engaged as Casual Labourer since 2001 and later reengaged as per seniority list but thereafter as per revised seniority list pursuant to court directions other Casual Labourer have been engaged, therefore, it cannot be re-agitated now.

11. They have explained that no posts of waterman and mali exit in the office of respondents and the posts of painter/packer/chowkidar/chaprasi are filled up on regular basis, therefore, there is no requirement of casual labours on these posts.

12. Casual Labours are being engaged from 2001 only in accordance with seniority position (Annexure R-II) as maintained by respondents, therefore, the actions of respondents cannot be disputed.

13. They have explained that regular appointments are made as per the requirement of a post in accordance with Recruitment Rules but as far as Casual Labour is concerned, they have not engaged any Casual Labour since May 2003 in view of different directions given in OA 268/2001, 269/2001 and 3101/2002 which have been clarified only on 3.4.2004 in MA No. 220/2004 in CP No. 147/2003 (Annexure R-III).

14. As far as engaging Casual Labour through contractor is concerned, they have stated that annual maintenance of contract of desert coolers is awarded as per norms and all conditions arising out of contract are handled by the contractor, therefore, applicant has not made out any case for interference. The OA may, therefore, be dismissed.

15. I have heard both the counsel and perused the pleadings as well. Counsel for the respondents vehemently argued that this OA is not at all maintainable because earlier also applicant had filed OA No. 1448/2000 wherein direction was given to the respondents to consider the claim of applicant for reengagement as a Casual Labour in preference to freshers, juniors and outsiders, therefore, if applicant feels that respondents are violating the said directions, his remedy lies in CP and



OA cannot be filed for same purpose again whereas counsel for applicant submitted earlier he had not prayed for grant of temporary status and regularisation whereas now he is seeking that therefore, scope of both the OAs is different.

16. Respondents have annexed earlier OA. It is seen in OA No. 1448/2000, applicant had sought a direction to the respondents to reengage the applicant as Casual Labour in preference to freshers and outsiders without insisting on fresh sponsorship by the Employment Exchange (Page 64), on the ground that he has already worked for 287 days between 1997 to 1999 yet respondents were engaging freshers and outsiders by ignoring him. The above OA was filed in the year 2000 when scheme for grant of temporary status and regularisation of Casual Labour issued on 10.9.1993 was already in existence, therefore, if applicant wanted the benefit of same, he ought to have mentioned about it in the said OA itself. Not having done so, this OA is barred by the principle of constructive res judicata. According to the doctrine of constructive res judicata when any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eyes of law to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been decided. It bars the trial of an identical issue in a subsequent proceeding between the same parties.

17. Even otherwise it is seen that in earlier OA Tribunal had already directed the respondents to consider the claim of applicant for reengagement as a Casual Labour, subject to availability of work and in preference to freshers /juniors /outsiders. This direction holds good and if respondents violate this direction, applicant can always file a contempt petition. In fact respondents are right to the extent that engagement of freshers was already agitated by the applicant in earlier OA and it was after considering the contentions of rival parties that the above mentioned direction was given. Respondents were also directed not to insist for fresh sponsorship by Employment Exchange on each occasion. The applicant had even filed CP which was decided on 20.2.2002 wherein Court observed clearly that respondents have rectified their mistake and reengaged the applicant as per his seniority, therefore, CP was dropped (Page 28). Therefore, upto this stage, the persons who are stated to have been engaged as freshers, were already taken care off.

18. Any cause of action for filing another OA would be available only if there was some other fresh grievance which had not already been agitated before Tribunal in CP, therefore, let us examine whether any new grievance has been stated by the applicant in this OA or not in

order to see whether this OA is maintainable or not. The only paras which would be relevant for this purpose start from para 4.30, as earlier paras are only repetition of past period which cannot even be looked into in view of order dated 20.02.2002 passed in CP.

19. In para 4.30, applicant has stated that respondents continue to engage freshers directly or through contractors and some names are given in para 4.31 who are stated to have been engaged as waterman in 2004 ignoring the applicant. However, this position has been explained by the respondents by stating that they have not engaged any Casual Labour since May 2003 in view of different directions given by the Tribunal and as far as contract is concerned, that is for Annual maintenance of desert coolers which has been awarded as per norms.

20. I cannot find any fault with the respondents if they have given contract for annual maintenance of desert coolers as that is a specialized job to be got done by a mechanic. It definitely cannot be left to the Casual Labour who have no knowledge of working of desert coolers. The contention of applicants that even for maintenance of desert coolers, respondents could not have given the contract is not sustainable in law. The same is accordingly rejected. Respondents have stated categorically that in view of different directions given by the Tribunal in different OAs, no casual labour has been engaged since May 2003. In this connection, all the judgments have been annexed by the respondents. In OA No. 268/2001 decided on 9.10.2001, this Tribunal observed that seniority list of Casual Labour has been prepared by respondents with reference to the date of entry in service but court directed the respondents to revise it on the basis of length of service rendered by each Casual Labour and reengage the persons therefrom as and when work of casual nature becomes available (Page 32) but in OA No. 3101/02 decided on 27.11.2002, this court directed the respondents to maintain seniority on the basis of date of joining (Page 45). This contradiction was finally resolved on 5.4.2004 after considering both the points by stating that respondents shall take into consideration the length of service of Casual Labour while preparing seniority list of Casual Labour (Page 52). The respondents thereafter issued provisional seniority list on 23.8.2004 on the basis of length of service (no. of days) (Page 21) but whether it be date of joining or number of days, applicant has remained at Sl. No. 1 in the seniority list (Page 15 and 22). It is not the case of applicant that any person below him from this list has been reengaged or any freshers apart from maintenance contract have been reengaged ignoring the applicant, therefore, it is clear that no new cause of action has arisen in favour of applicant for filing this OA.



21. The only new ground taken by applicant is for grant of temporary status and regularisation but that point is also decided conclusively by Hon'ble Supreme Court in the case of **U.O.I. Vs Mohanpal** reported in 2002 (1) SCSLJ 464 wherein it is clearly held that the scheme of 1.9.1993 is one time measure and is not an ongoing scheme. Moreover it would apply only to such persons who were in employment as on 1.9.1993 and had already completed 240 days in the preceding years.

22. In the instant case applicants were admittedly not in employment with respondents on 1.9.1993 as he was engaged only in 1997 as per his own showing, therefore, the scheme of 1.9.1993 is not even applicable to the applicant, therefore, he cannot claim the benefit of this scheme at all.

23. The OA is therefore found to be devoid of any merit. The same is accordingly dismissed. It is, however, made clear that the directions already given in OA No. 1448/2000 shall hold good in future as well. No order as to costs.


 (Meera Chhibber)
 Member(J)

'SRD'