

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2900/1992

Date of decision: 11.10.1993

Shri Sri Pal

...Petitioner

Versus

Union of India & Another

...Respondents

For the Petitioner

...Shri B. Krishan, Counsel

For the Respondents

..Sh. Tek Chand, UDC on behalf
of the respondents.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner, a casual worker, has approached this Tribunal with the principal prayer that his services may be regularized in Group "D" post.

2. A counter-affidavit has been filed on behalf of the respondents. In it, the material averments are these:

The petitioner worked in the Directorate of Estate as casual labourer (Waterman) from 23.04.1990 to 15.10.1990 and thereafter from 18.04.1991 to 15.10.1991. He again worked as a casual labourer for casual work with break in service from 24.1.1992. Annexure R-I to the reply shows that on 03.08.1992 the petitioner was given an employment as a casual labourer in relation to the eviction of unauthorised occupants for the period beginning from 23.07.1992 to 20.10.1992.

3. Admittedly, the Office Memorandum dated 13.10.1983 read with the OM dated 26.10.1984 and the OM dated 7.6.1988, are applicable to the case of the petitioner. A combined reading of the same clearly

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shows that in order to be eligible for being considered for regularisation in Group "D", a casual worker has to put in 240 days or 206 days of service, as the same may be, in each of the two consecutive years.

4. In the rejoinder-affidavit filed, no attempt has been made to controvert the aforementioned averments in the counter-affidavit. The petitioner could have controverted them by giving the number of actual days during which he had worked during the years 1991-92. In the absence of such an averment in the rejoinder-affidavit, the averments made in the counter-affidavit have to be accepted as correct. From a reading of the counter-affidavit, we find that there was a break in service till 24.01.1992. By adopting any process, one cannot reach the conclusion that the petitioner rendered service for 240 or 206 days either in the year 1991 or in the year 1992.

5. Reliance is placed by the learned counsel for the petitioner on a decision of the Supreme Court in Mohan Lal Vs. The Management of M/s Bharat Electronics Ltd., 1981 (2) SLR page 11. This was a case where their Lordships were interpreting Sections 25-B and 25F of the Industrial Disputes Act, 1947. In that provision there is an independent scheme for calculating the number of days. This case has no application to the facts of the present case.

6. The petitioner cannot get any advantage of the Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme which came into force with effect from 1.1.1993.

8/9 7. Theme of The scheme states, that the scheme is applicable to casual labourers "in employment". Admittedly, on 1.9.1993, the petitioner was not in employment.

8. The petitioner cannot get any relief so far as regularisation in Group "D" post is concerned.

9. It goes without saying that if a fresh appointment is made by the respondents, the petitioner shall also be considered keeping in view the provisions of Article 16 of the Constitution.

10. This petition fails and it is dismissed. No costs.

B.N. DHOUDIYAL
(B.N. DHOUDIYAL)
MEMBER (A)
11.10.1993

S.K. DHAON
(S.K. DHAON)
VICE CHAIRMAN
11.10.1993