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Central Administrative Tribunal
Principal Bench: New Delhi

OA 2916/92

New Delhi this the 22nd day of April 1997.

Hon'ble Mr Justice K.M. Agarwal, Chairman
Hon'ble Mr K. Muthukumar, Member (A)

Agar Singh Yadav
Son of Shri Gyan Singh Yadav
C/o Jagat Singh
B/439 Dakshinpuri
Opp. Virat Talkies
New Delhi - 66.

...Applicant.

(By advocate: Shri H.P.Chakravorty)

Versus

1. The Secretary
Defence (Military Farm)
Ministry of Defence
Raksha Bhawan
New Delhi.

2. The Deputy Assistant Director
Officer in Charge (Military Farm)
Jhansi Cantt.
Jhansi.

...Respondents.

(By advocate: Shri M.M.Sudan)

ORDER (oral)

Hon'ble Mr Justice K.M. Agarwal, Chairman

This is an application under Section 19 of the A. T. Act, 1985 for reinstatement in service as a casual labour after quashing the oral order of termination alleged to have been passed in August 1991.

2. Briefly stated, the applicant was appointed as a casual labour w.e.f. 1.3.1988 by respondent No.2 at Jhansi. By the impugned oral order of termination passed in August 1991, his services were terminated and, therefore, this petition was filed for reinstatement. The petition has been resisted by the

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respondents.

3. Learned counsel for the applicant submitted that after serving for a period of more than three years, the applicant was subjected to the impugned order of termination. It was further submitted that alongwith the applicant other casual labourers were also working but their services were not terminated. According to the learned counsel, on the basis of the rule of **last come first go**, the services of the applicant should not have been terminated before terminating similar services of those who were admittedly juniors to the applicant. When pointed out by the learned counsel for the respondents that as stated in para 4.5 of the counter that the applicant had voluntarily left the services with the respondent No.2 and had joined employment in Army Supply Corps, learned counsel for the applicant submitted that being out of employment, the applicant had no choice but to join the services of Army Supply Corps at the same rate which he was getting from respondent No.2. It was further submitted that the services with the Army Supply Corps were casual and temporary in nature in as much as only casual employees were engaged and, therefore, the applicant had absolutely no chance of absorption in regular service whereas he had some chance while in service with the respondent No.2. It appears from the petition and annexed documents that the applicant had also approached the Labour Court, but the learned counsel says that it was under the Payment of Wages Act, claiming difference of his pay. He further submitted that so far as retrenchment or removal from service was concerned, he did not go either to the Labour Court or to the Industrial Court. According to him, such dispute could not be adjudicated before a Labour or Industrial Court.

4. We find it difficult for us to agree with the learned counsel for the applicant that the applicant could not challenge the order of termination before the Labour Court or Industrial

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Court. According to us, the order impugned could be challenged either in the Labour Court or in the Industrial Court and if he went to the Labour Court for the purpose of difference of his pay, he could also go to the Labour Court for reinstatement in service and the question could be properly adjudicated upon after recording the evidence of the parties. Here we find it difficult to agree with the learned counsel, particularly in the absence of any material to show that the services of the applicant were terminated but the services of his juniors were continued. Subsequent employment would not give any right in favour of the applicant.

5. Similarly, there is no document to show that in the circumstances alleged, the applicant had joined the services of Army Supply Corps. The material placed along with the rejoinder in this regard cannot be looked into in view of the fact that the rejoinder alongwith the documents has not been taken on record.. The application was earlier rejected by us. Only on the ground that there was chance of regularisation while in service with the respondent No.2 whereas no such chance was available while in service with the Army Supply Corps, the applicant cannot get reinstatement in service after expiry of such a long period from the date of termination though the application was filed in the year 1992. This is well within the time from the date of termination order.

6. For the foregoing reasons, we find no merit in this application. Accordingly, it is hereby dismissed but without any order as to costs.


[K.M. Agarwal]
Chairman


[K. Muthukumar]
Member (A)