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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 831/92

DECIDED ON : 4.9.1992

Subhash Chander ... Applicant
Vs.
Ministry of Defence & Anr. ... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether to be referred to the Reporter? Yes
2. Whether reporters of local newspapers may be allowed to see the Judgment? Yes
3. Whether Their Lordships wish to see the fair copy of the Judgment? No.
4. Whether to be circulated to other Benches? No.

(P. C. Jain)
Member (A)

(T. S. Oberoi)
Member (J)

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CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri V. K. Rao, Counsel for the Applicant

Shri P. H. Ramchandani, Sr. Counsel for
the Respondents

JUDGMENT

By Hon'ble Shri P. C. Jain, Member (A) :

The applicant was appointed as a casual Telephone Operator Grade-II under respondent No. 2, viz., Commanding Officer, INS India, Dalhousie Road, New Delhi. He states that his appointment followed the sponsorship of his name by the Employment Exchange and after holding interview, medical examination and police verification. It is further stated that though the appointment was made for specified period it was renewed from time to time and he has put in four years of uninterrupted service without any break. Aggrieved by the non-regularisation of his appointment and apprehending termination of his service, he filed this O.A. under section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to regularise his services with all the benefits of seniority and fitment etc. and not to terminate his services till his regularisation by preparing a scheme or otherwise. As an interim measure, by an order passed on 27.3.1992 the respondents were directed "not to discontinue the services of the applicant, on the post presently held by him, till the next date." This interim order has continued since

then.

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2. During the pendency of these proceedings, the learned counsel for the respondents produced an order dated 24.6.1992 by which the applicant was appointed as Telephone Operator Grade-II on regular basis with immediate effect and posted to DND (SDG), R. K. Puram against a vacancy of Telephone Operator Grade-II sanctioned by the Government. By the same order he was also placed on probation for a period of two years and it was also stated that service rendered on casual basis prior to regularisation shall not count for the purpose of seniority, pay fixation etc. In view of the order dated 24.6.1992 appointing the applicant on regular basis, it was submitted on behalf of the respondents that it was not necessary to file any written reply. With the consent of both parties, the case was finally heard for disposal at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

3. The main relief prayed for by the applicant in this O.A. about regularisation of his services as Telephone Operator Grade-II, has already been granted by the respondents by issuing order dated 24.6.1992. The learned counsel for the applicant, however, pressed that the applicant's services prior to his appointment on regular basis should also count for seniority and increments. The question which falls for determination in this case is whether the services rendered as a casual employee should count for seniority and pay fixation on appointment on regular basis. The learned counsel for the applicant urged that casual services rendered by the applicant are required to be counted for seniority and pay fixation. In support of his contention, he has cited the following four cases :-

(1) Baleshwar Dass vs. State of U.P. & Ors. :
1980 SCC (L&S) 531;

(2) Vasant Kumar Jaiswal vs. State of M.P. :
(1987) 5 ATC 165 SC;

(3) Delhi Water Supply and Sewage Disposal Committee & Ors. vs. R. K. Kashyap & Ors : (1989) 9 ATC 784 SC; and

(4) K. A. Ravindran vs. Union of India & 3 Ors. :
SLJ 1991 (1) (CAT) 179.

We have perused these judgments and find that these are not relevant for the issue before us. None of these judgments lays down that service rendered as a casual labour is to count for seniority or pay fixation on appointment on regular basis.

4. The applicant has also cited some judgments in the C.A. itself. These primarily pertain to regularisation of persons initially appointed on daily rated/casual/ad-hoc basis; these do not pertain to counting of service as casual employee for purposes of seniority and pay fixation on regular appointment. These judgments also stress upon desirability of not keeping the employees on ad-hoc or daily rated basis for unnecessary long periods. It was only in the case of Bhardwad District, P.W.D. Literate Daily Wages Employees Association & Ors. vs. State of Karnataka & Anr. (cited by the applicant in the C.A.) that one of the directions of the Supreme Court was that at the point of regularisation of the casual or daily rated employees who become entitled to absorption as per the directions of the Supreme Court, credit was to be given for every unit of five years of service in excess of ten

C.L.

years and allowing one additional increment in the time scale of pay by way of weightage. In the case before us the applicant had put in less than four years of casual service. Though he claims that this service was continuous and without any break, he has not placed any material on record to substantiate that contention. Even otherwise, as stated above, in the case cited above one increment for five years of service was to be allowed after service of ten years. Thus, the cited case is not of any help to the applicant in regard to the matter in issue before us. The applicant has not been able to cite any authority according to which service rendered as a casual employee is to be counted on appointment on regular basis for purposes of seniority and pay fixation. Moreover, the recruitment rules notified under ^{C. ai} proviso to Article 309 of the Constitution exists for the post of Telephone Operator Grade-II. In such a situation, it is well settled that length of service cannot be followed as a criteria for determining seniority. Learned counsel for the respondents also stated at the bar under instructions from the departmental representative that the post on which the applicant has been appointed by order dated 24.6.1992 is not included in any cadre and as such, the question of seniority does not arise. The Indian Navy Group 'C' Posts (Telephone Supervisors, Switch Board Supervisors, Telephone Operators and Switch Board Operators) Recruitment Rules, 1979 as amended by notification dated 2.1.1986 prescribe that the post of Telephone Operator Grade-II shall be filled in by transfer and ^{C. ai} filling that by direct recruitment. These rules also provide for a probation of two years for direct recruits. It is not the case of the applicant that he was

(1)

appointed to this post on transfer. As such his appointment has to be treated as a direct recruitment and it can have effect only from the date he has been so appointed by order dated 24.6.1992. In this view of the matter also, he cannot be held entitled to count his previous casual service either for purposes of seniority or for pay fixation.

5. As already stated above, the applicant has already been given regular appointment and as such the main relief prayed for in the O.A. has already been allowed. His contention that his casual service should also count for seniority and pay fixation cannot be upheld, as discussed above. The O.A. is accordingly disposed of leaving the parties to bear their own costs.

(Cecil 4/9/92)
(P. C. JAIN)
MEMBER (A)

(T. S. OBEROI)
MEMBER (J)

as
pronounced by the undersigned in open Court.

(Cecil)
(P. C. Jain)
Member (A)
4.9.1992