

Central Administrative Tribunal
Principal Bench: New Delhi

30

OA No. 909 of 1992 decided on 1st August, 1997

Hari Ram ...Applicant
(By Advocate : Shri Sunil Malhotra)

Vs

Union of India & Ors. ...Respondents
(By Advocate : Shri R.P. Aggarwal)

CORUM

Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? YES/NO
2. Whether to be circulated to other Benches of the Tribunal? YES/NO

N. Sahu
(N. Sahu)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

original Application No. 909 of 1992

(31)

New Delhi, this the 1st day of August, 1997

Hon'ble Mr. N. Sahu, Member (A)

Hari Ram son of Sh. Radhy Shayan,
R/o Village Kurar Ibrahim pur,
Tehsil & Distt. Sonepat

-APPLICANT

(By Advocate - Shri Sunil Malhotra)

Versus

1. Union of India through Controller General
Defence Accounts, R.K.Puram, New Delhi

2. The Controller of Defence Accounts,
(Pension Disbursing) Meerut Cantt (UP)

3. The Defence Pension Disbursing Officer,
Kakrej Road, Sonepat

-RESPONDENTS

(By Advocate - Shri R.P. Aggarwal)

JUDGMENT

Hon'ble Mr. N. Sahu, Member (A) -

The applicant was appointed as a casual labourer on 5.7.1984 and continued with occasional breaks till 27.1.1991. He was disengaged on that day and he did not work till 15.7.1992. He was reengaged on 16.7.1992, in terms of the directions of the Tribunal on Admission on 2.4.1992; and continued to work till date. He was granted temporary status by an order dated 9.6.1995 with effect from 1.9.1993 but the said temporary status was withdrawn by an order of the CDA (PD), Meerut Cantt, Part II O.O. 1181 dated 13.12.1995 (Annexure-A-16). The cancellation and withdrawal was retrospectively w.e.f. 1.9.1993 on the ground that the applicant's name was not sponsored through Employment Exchange. The benefits bestowed on the applicant were directed to be recovered by an order dated 1.3.1996 (Annexure-A-15).

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2. It is agreed that the applicant had put in more than 240 days of service during each year of his engagement. The respondents state that while reviewing the case of casual labourers by the circular dated 7.6.1988 they found that the applicant could not be retained because he would not be regularised in due course. They found that he did not fulfil the criteria laid down for regularisation. There were two defects noticed that were coming in the way of the applicant's regularisation. The first defect was that he was over aged at the time of his initial engagement as a casual labourer and the second requirement was that he was not sponsored by the Employment Exchange. The applicant has no difficulty in crossing over the hurdle of non-sponsoring of his name through the Employment Exchange because there was a relaxation by the Government's letter No.40014/18/84-Estt (C) dated 7th May, 1985. There is a decision of the Apex Court now available in the case of Excise Superintendent, Malkapatnam Vs. K. B. N. Visweshwara Rao, 1996 SCC (L&S) 1420 in which it was held that the restriction imposed by the Central and State Governments for filling up Government jobs solely through Employment Exchange was held to be not proper. The Hon'ble Supreme Court suggested that recruitment be made through Employment Exchange as well as through publication in the Newspapers. Thus, there is no difficulty about the alleged handicap of the applicant of not getting sponsorship from the Employment Exchange.

3. In the above background the reliefs claimed are to be considered. The first relief claimed is
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whether the termination order is bad in law because the applicant had been working continuously with effect from 5.7.1984 and completed more than 240 days in two consecutive years? Is he entitled to regularisation? Since he had acquired a temporary status can he be terminated summarily without the procedure laid down for temporary status employees?

4. I shall first consider whether the respondents were justified in terminating his services. I have no doubt in my mind that temporary status had been correctly conferred on the applicant because he had complied with the condition of completing 240 days of service in an office observing six days week or 206 days of service in an office observing five days week. Such conferment of temporary status would be without reference to the availability of regular Group 'D' posts. The services of a casual labourer having temporary status can be dispensed with only by giving a notice of one month in writing. It is admitted that no such notice had been given to the applicant and, therefore, his termination is bad in law. The Govt. of India, Dept. of Personnel & Training vide O.M.No.49014/2/93-Estt(C) dated the 12th July, 1994, published in Swamy's Establishment and Administration, Sixth Edition, 1997, page 236 clarified as under-

"Point 3.- Will the casual labourers initially engaged after crossing the upper age-limit prescribed for recruitment to Group 'D' posts be eligible for grant of temporary status?
Clarification.- No age-limit has been prescribed for grant of temporary status. However, for the purpose of subsequent regularisation, the conditions regarding age and educational qualifications prescribed in the relevant recruitment rules will apply."

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Thus, the bar of upper age limit and the bar of non-sponsoring by Employment Exchange will not apply to the applicant in respect of conferment and continuing him as a temporary status worker. The order of the respondents cancelling the temporary status is hereby set aside and the applicant shall continue to enjoy the benefit of temporary status as long as he works in the department.

5. The Government of India, Department of Personnel & Training vide O.M.No.49014/2/86-Estt(C) dated the 7th June, 1988 issued certain guidelines in the matter of recruitment of casual workers in view of the decision of the Hon'ble Supreme Court dated 17th January, 1986 in a Writ Petition filed by Shri Surinder Singh and others Vs. Union of India. The direction was that all the Administrative Ministries and Departments should initiate a review of appointment of casual workers in the offices under their control on a time bound basis. As far as the applicant's department is concerned, the time limit given was six months. The directions given by the DOPT are that "(a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified; (b) the rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines; and (c) the remaining casual workers not covered by (a) and (b) above are discharged from service." The respondents under this OM issued on 7.6.1988 should have decided the fate of the applicant by the beginning of 1989. But his services were terminated on 27.1.1991 by an order of termination dated 24.1.91.



This delay in review no doubt is a glaring fault, but this per se does not advance the case of the applicant and make the termination order bad in law. Since termination has been done without notice, it is improper.

6. With regard to regularisation, I agree with the respondents' claim that the age limit can be waived only if the applicant was within the permitted age at the entry point as a casual labourer. It is not denied that the applicant was over-aged at the entry point as a casual labourer. The respondents, therefore, within the parameters fixed for regularisation are justified in refusing to regularise him in a Group 'D' post. The applicant, however, has put in by now 13 years of service except 1½ years from 28.1.1991 to 15.7.1992. It is true he was appointed only as a casual labourer and there are no orders appointing him as a Watchman or a Peon, but the contention of the applicant is that he discharged the functions of a Watchman or a Peon. This was not directly denied by the respondents. The Defence Pension Disbursing Officer, Sonepat by his letter dated 10.1.1990 addressed to the C.D.A. Meerut has made out a fervent plea for waiving the applicant's age limit. There is a provision that the relaxation can be made with the prior approval of the Ministry of Finance and Dept. of Personnel, Govt. of India, Dept. of Personnel & Training OM No.49014/2/86 Estt. (C) dated 7.6.1988 and Min. of Labour OM dated 23.8.88 Para 1(xi) Refer to Swamy's Establishment & Administration, Sixth Edition, Chapter 22 Page 227. The respondents

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36
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may make out a suitable case for relaxation and if relaxation is permitted may consider him, in view of the long service, for regularisation. As it is, the only relief the applicant is entitled to is that he shall continue as a temporary service worker/casual labourer with all attendant benefits. The Original Application is disposed of as above. No costs.

Parasuramam.

(N. Sahu)
Member (A)

1/8/97.

rkv.