

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ; ALLAHABAD

ORIGINAL APPLICATION NUMBER 1267 OF 1997

ALLAHABAD, THIS THE 12th DAY OF MARCH, 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Baboo Lal, aged about 27 years, s/o Shri Narain Das, r/o Village and Post Gwaltoli, Hasari, District- Jhansi.

....Applicant

(By Advocate : Shri R.K. Nigam)

V E R S U S

1. Union of India, through Secretary Defence, Ministry of Defence, New Delhi.

2. Officer I/C Military Farm, Jhansi.

3. Dy. Director, Military Farm (Central Commandant), Lucknow.

....Respondents

(By Advocate : Shri R. Sharma)

O R D E R

By this O.A., applicant has sought the following

reliefs:

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the oral termination of the petitioner (01.08.1997)

(ii) to issue another writ, order or direction in the nature of mandamus thereby commanding respondents to re-engage and continue the petitioner in employment in Group 'D' daily rated Industrial Labour in Military Farm Jhansi and not to interfere in his working in any manner whatsoever and further commanding them to finalise the screening and consider the petitioner according to his seniority and quantum of service.

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(iii) to issue any other suitable order in favour of the humble petitioner as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.

(iv) to award cost of the petition in favour of the humble petitioner."

2. It is submitted by the applicant that he was initially engaged in Military Farm, Jhansi w.e.f. January, 1989 on daily wages basis. There has never been any complaint against him through out his working. He has put in more than 240 days continuous service without any break but when he gave representation dated 02.07.1997 ~~is~~ ^{he was} ~~was~~ terminated w.e.f. 01.08.1997. He has further submitted that he had been sponsored from Employment Exchange and once the process of recruitment had started, it could not have been to put an end abruptly. He has also submitted that respondents are having adequate number of vacancies and he has been eased out only to induct their own favourites. He has also submitted that respondents are going to hurriedly finalise the recruitment process and until his rights are protected, ^{he would be caused to him, 18} he would incur irreparable loss. Therefor, he had no other option but to file this O.A..

3. In the O.A., applicant had taken number of grounds under the Industrial Disputes Act but at the time of arguments, he gave up all those arguments as in that case he would have to go to Labour Court. Therefore, ~~confined~~^{he is} his submissions only to the extent that inspite of vacancies, the respondents could not have terminated his services and that he was entitled to ^{be} continued in employment in Group 'D' daily rated workers.

4. Respondents have opposed this O.A. on the ground that applicant had worked last with the respondents only in 1995 and was initially engaged as daily rated labour w.e.f. February, 91 to November, 91 for a total period of 230 days on as and when required basis as a leave substitute. Later on he was engaged as a daily labour against leave substitute w.e.f. 01.01.1995 to 31.12.1995 for 313 days and since he has not put up 240 days for two consecutive years and was not even employed against clear vacancy. As such, the Judgment of Hon'ble Supreme Court given in the case of S.B.I. Versus R. Sundramani case, would not apply in the present case. They have also specifically stated that ~~any~~ no junior to the applicant is working under the respondent No.2 as all the daily rated labour have been ceased w.e.f. 01.08.97 due to reduction in animals strength re-organisation of Farm activities and at present leave substitute are made up by the authorised strength only, to cut-down Government expenditure as per directions of higher authorities.

5. Respondents have also filed Supplementary Counter Affidavit ^{stating} therein that the Military Farm, Jhansi is having 25 Farm Hands surplus at present due to reduction of P.E. on the recommendation of Vth Pay Commission and names of these 25 Farm Hands have been intimated to A.G.'s Branch Army Headquarter for their adjustment in other department and till these 25 Farm Hands are posted to other departments for seasonal cultivation section, their services are being utilised in this Farm. They have also specifically stated that no person junior to the applicant

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has been retained in service nor any process of regularisation is going on. Therefore, in view of the facts as explained by them, they have prayed that the O.A. may be dismissed with costs. They have also relied on the judgment given by this Tribunal in O.A. No. 1266 of 1997 decided on 15.05.2001 and another O.A. No. 1112 of 1998 decided on 27.11.2001. In both these cases, the Tribunal had held that no establishment can be forced to engage or employ the persons over and above their requirement and the sanctioned strength. Therefore, no direction is legally possible, as sought for by the applicants but it is provided that whenever occasion arises and the casual labourers are engaged due priority be given to the applicants, keeping in view the days of their work in the respondents establishment.

6. I have heard both the counsel and perused the pleadings.

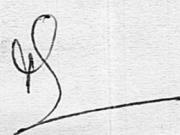
7. Perusal of the O.A. shows that applicant has nowhere stated that he had worked continuously for 240 days in one year. He has not given any names of the persons who have retained by the respondents. There is only vague averment that applicant have been ousted to induct their own favourites. But in view of the categorical statement made by the respondents in their Supplementary Counter Affidavit explaining the position that Military Farm is infact having 25 Farm Hands surplus at present due to reduction of P.E. on the recommendation of Vth Pay



Commission and also the fact that no person junior to the applicant has been retained in service nor any process of regularisation is going on. I am satisfied that no ^{can be} directions ~~were~~ given to the respondents as claimed by the applicant in his O.A. This Supplementary Counter Affidavit was filed by the respondents as back as on 18.03.2001, after serving a copy on the applicant's counsel but till date ^{is bothered to} the applicant has not rebutted, the averments made in the said Supplementary Counter Affidavit are therefore deemed to have been accepted by applicant. ^{in law.}

8. Counsel for the applicant had strenuously argued that in para 4(11) they had specifically stated that respondents are having adequate number of vacancies but the same has not been disputed by the respondents. In their para 18 of the Counter Affidavit, Respondents had stated that para 4(10) & 4(11) of the petition are not admitted, as stated. In reply it is submitted that respondents are not having adequate number of vacancies as alleged and as such no favouritism is shown to induct their own favourites. It is further submitted that no process of recruitment/regularisation or screening was going on when the oral termination was effected. It has been further clarified by the respondents by filing the Supplementary Counter Affidavit, as mentioned above. Therefore, it cannot be said that respondents have ^{any} vacancies available with them. Applicant has not been able to show us any notification, which is allegedly to have been issued by the respondents.

For the petitioner

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for making regular recruitment or for engaging Casual Labourer nor have given any names to show that after terminating their services, respondents are engaging other persons or Casual Labourers. Therefore, this O.A. is ~~void~~ totally devoid of merit as such is dismissed with no order as to costs.


Member (J)

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