Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1627 of 2001

Allahabad, this the 22nd day of January, 2004

Hon'ble Mrs. Meera Chhibber, J.M.

1. Chandra Prakash,

2. Gyan Prakash
both are S/o Shri
Ram Sumer, r/o Vill.
& post Bara Gaon,
Tehsil Chyal,
Distt. Allahabad. ....Applicants.

(By Advocate : Shri Ashish Srivastava)

Versus

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

2. Chief Controller Defence
Account (pension),
Allahabad.

3. Senior Accounts Officer,
Office of the CCDA (P)
Dropadi Ghat, Allahabad. ....Respondents.

(By Advocate : Shri R.C.Joshi)

O R D E R

By this O.A. two applicants have sought the following relief(s) :

"(i) Issue a direction commanding the respondents to extend the benefit of judgement passed in O.A. No.14/93 Jag Lal and others - Union of India & others.

(ii) Issue a direction to the respondents to enter the name of petitioners in the seniority list.

(iii) Issue a direxion directing the respondents to re-engage the petitioners from the date of engagement of his juniors.

(iv) Any other relief as this Hon'ble Court deem fit and proper in the circumstances of the present case."

Contd....2.

2. It is submitted by the applicants that they were registered with local Employment Exchange, Allahabad and were recruited after a proper interview and selection. They had worked continuously from 1985-1991 even though they were paid Rs. 25/- per day. It is submitted by the applicants that they were entitled to be regularised to the regular pay and allowances and other benefits as admissible to other employees. They have submitted that there were number of vacancies lying vacant like Sweeper, peon etc. and the work is also available throughout the year, but in order to deprive them the benefit of regularisation, respondents are indulging unfair labour practice by breaking the services of the applicants and replacing them with other daily rated employees, thus, not permitting them to complete 240 days in a particular year.

3. They have submitted that they came to know in the year 1998 that some similarly situated employees who were juniors to the petitioners, had filed O.A. no. 14 of 1993, which was decided on 4.7.97 (Annexure -1) whereby direction was given to the respondents to maintain the seniority list of those casual labourers who were earlier being engaged and they may be given information of availability of casual work and they should be given work based on their seniority in the list of casual labour so maintained. In view of the above judgment, applicants submitted a representation seeking re-engagement (Annexure A-2), but vide letter dated 19.9.98 applicant no.1 was informed that only those 32 labourers have been engaged who had filed O.A. before the Tribunal (Annexure A-3). It is this order which has been challenged by the applicants stating that the judgment given in O.A. no. 14/93 was judgment in rem, therefore, applicants could not have been denied the benefit of the judgment.

4. Respondents, on the other hand, have opposed this O.A. on the ground that the applicants had not come to the Court with clean hands and have given wrong statement, therefore,

O.A. is liable to be dismissed on this ground alone. They have further submitted that the case of the petitioners in O.A. no. 14/93 is entirely different, therefore, applicants cannot claim the benefit of the said judgment. They have denied that any representation was given by the applicants. They have infact stated that the averments with regard to the representation has been made in order to gain limitation in filing the present O.A. They have submitted that applicants were engaged as daily rated casual labour on 1.4.85 and 6.4.88 respectively for seasonal or intermittent work. It is wrong that they were employed as class IVth employee and even at that time applicants did not perform their duties with full satisfaction as they were found to be irregular, which is evident from the working chart annexed with the Counter as CA-1 & 2. They have infact stated that the applicant no.1 was found absent approx. for 4 years, while applicant no.2 was absent for about 2 years during their engagements from 1.4.85 to 25.1.91 and from 6.4.88 to 25.3.91 and they were never engaged as Casual labour after 1991, therefore, it is wrong to suggest that they were being paid Rs.25/- per day. They have further explained that the need of such casual labourers was felt during summer season for spriking water on Khas Khas Tatties and filling water in the desert coolers. In 1991 their candidatures were not approved by the selection committee, therefore, they were not engaged after 1991. They have, thus, submitted that applicants have no right to file this O.A., the same may, therefore, be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

6. Admittedly, applicants had last worked with the respondents in 1991, whereas present O.A. has been filed only on 11.5.2001 i.e. after 10 years. If the applicants were aggrieved by their dis-engagement, they ought to have challenged the action of the respondents at that relevant

time, but no such effort was made by them. Simply because some other persons had filed O.A. in the Tribunal and some orders were passed therein, it cannot give a fresh cause of action to the applicants as this point has already been held by the Hon'ble Supreme Court in the case of Bhoop Singh Vs. U.O.I. & Ors reported in JT 1992 (3) SC 322. It was held as under :

> "The judgment and order of the Court passed in other cases do not give cause of action. The cause of action has to be reckoned from the actual date. Termination of service - Challenge after 22 years on the ground that similarly dismissed employees have been reinstated as a result of their Writ petitions- Inordinate and un-explained- relief(s) refused."

Similarly in Ratan Chandra Samanta & Ors. Vs. U.O.I. & ors reported in JT 1993(3) SC 418, the apex court has held as under:

> "Casual labourer-petitioners were employed between 1964 to 1969 and retrenched between 1975 to 1979 - Lapse of over 15 years- Delay deprives the person of the remedy available in law- A person who has lost his remedy by lapse of time loses his right as well."

7. It is, therefore, settled by now that even casual labourers must approach the Court in time as stipulated under Section 21 of the AT Act. Kindly refer to Full Bench Judgment of the Tribunal in Mahaveer Prasad's case. Even otherwise perusal of the judgment in O.A. no. 14/93 shows that applicants therein were still engaged as the relief sought was to direct the respondents not to dis-continue the services of the applicants as Class IVth employees. More-over, it would be relevant to note that on 1.9.93 Govt. of India have taken a policy decision and a scheme was framed on 1.9.93 wherein it was clearly mentioned as to how and to whom temporary status/regularisation could be given in the said scheme. It was clearly stipulated that the scheme dated 1.9.93 is not 'on going Scheme' but is only one time measure and benefits of the same can be given to those who were in employment as on that day (2002) 1 SCSLJ 464). once uniform policy has been framed by the Govt. of India, which has been upheld by the apex court, naturally any action taken by the respondents had to be in confirmity with the said scheme

Earlier courts were of the view that this was on going scheme, therefore, orders were being passed differently, but now that matter has finally been settled by the apex court in the case of Mohan Pal as referred to above, things are clear. Since applicants were not engaged as on 1.9.93, they cannot claim regularisation or re-engagement and simply because some persons were re-emgaged pursuant to the orders passed by the Tribunal, even that cannot give any fresh cause of action to the applicants as they have never challenged their dis-continuance in 1991.

8. In view of the above discussions, there is no merit in the O.A. The same is accordingly dismissed. No costs.

MEMBER(J)

GIRISH/-