

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.309 OF 2001
ALLAHABAD THIS THE 30th DAY OF JANUARY 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Manish Kumar Yadav,
son of Sri Bachcha Lal Yadav,
resident of House No.5/14,
Paharpur, Police Line, Varanasi,
working as Daily Rated Employee,
in the Central Excise, Varanasi Division,
Varanasi.Applicant

(By Advocate Sri S.K. Misra & Sri S.K. Dey)

Versus

1. Union of India,
through the Commissioner of Central Excise,
Allahabad.
2. The Deputy Central Excise Commissioner,
Varanasi Division, Maqbul, Alam Road,
Varanasi.
3. The Administrative Officer,
Central Excise, Varanasi Division,
Maqbul Alam Road,
Varanasi.Respondents

(By Advocate Sri R.C. Joshi)

ORDER

By this O.A. the applicant has sought the
following reliefs:-

"The Tribunal may graciously be pleased to direct
the respondent to grant temporary status and
regularisation of service of the applicant in
light of the Scheme issued by the Ministry of
Personnel and Pension, Government of India, New
Delhi, dated 10.03.1993.

ii) The Tribunal may further be pleased to issue



a writ, order or direction which is deemed fit and proper in view of the facts and circumstances of the case.

iii) The Tribunal may be pleased to award of costs of this original application in favour of the applicant.

iv) The Tribunal may graciously be pleased to quash the oral order of termination dated 26.4.01 passed by respondent no.2 with all consequential benefits."

However, at the time of arguments, applicant's counsel gave up relief nos. 1,2 & 3 and submitted that ^{only B} he would be pressing the relief no.4.

2. It is submitted by the applicant that he was engaged in October' 98 initially and worked with artificial breaks. He was working in the office which observed 5 days a week. In support of his claim, he has relied on Annexure A-2 to show that he had worked initially in October' 98. His grievance is that even though he was entitled for temporary status and regularisation after continuously working for more than 206 days in a year as per the scheme issued by the Govt. of India, yet neither he was given the benefits of the said scheme, nor was he ~~allowed~~ ^{for regularisation}, even though he was continuously working till filing of the present O.A. He has further submitted that he has been paid his wages upto Sept.' 2000, but thereafter he was denied his wages. He had given number of representations, but respondents refused to acknowledge the representation dated 2.1.2001. He has further submitted that even though applicant was engaged as casual labour/ Farash, but he was even utilised as Driver whenever permanent Driver was went on leave, which is evident from the Identity card issued to him, but arbitrarily his services have been stopped w.e.f. 26.4.2001. He has further submitted that Principal Bench has decided several O.As of Daily rated employees working in the department of Central Excise and Customs in which daily rated casual labourers were terminated orally, but the Tribunal directed the respondents to grant

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temporary status to all of them and permitted them to rejoin the service as their services could not have been dis-engaged without giving them any notice in accordance with the scheme. Counsel for the applicant, thus, submitted that the same order be passed in his case as well.

3. Respondents, on the other hand, have submitted that applicant is not entitled for the benefit under the Govt. of India O.M. dated 10.9.93, therefore, he cannot be given the relief as claimed by him. They have also submitted that applicant was engaged as casual worker as and when required and was paid also his wages due for the days he performed his work. They have submitted that applicant did not work after October 2000, therefore, he is not entitled the wages from October 2000 onwards. They have further submitted that the O.M. dated 10.9.93 is applicable to only those casual labourers who were on employment on the day and had rendered atleast one year service, meaning thereby they should completed 206 days in one year, whereas as per applicant's own averments, he was engaged only in the year 1998, therefore, this O.M. is not at all applicable to the applicant. They have categorically stated that no representation from the petitioner has been received in the office and they have received sent the representation which are filed as Annexure A-9 and A-10 only after receiving the copy of the petition. They have, thus, submitted that there is no merit in the O.A. The same may, therefore, be dismissed.

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

5. O.M. dated 10.9.93 was the subject matter before the Hon'ble Supreme Court in the case of U.O.I. & ors. Vs. Mohan Pal & ors. wherein after discussing everything Hon'ble Supreme Court held that the scheme dated 10.9.93 was only one time measure and was not all the times continuing

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scheme. It was also held therein that the benefits of the same can be given to only those casual labourers who were in employment as on that date. In the instant case, admittedly, applicant was not in employment as on 10.9.93, therefore, he cannot seek the benefits of the said scheme. In other words, neither he could be allowed for grant of temporary status, nor regularisation. As far as the question of re-engagement of the applicant is concerned, applicant could have succeeded only if he was able to show that after dis-engaging him, respondents had engaged some other fresh or junior persons then the applicant. Applicant has not given any such names in the entire O.A., but he has relied on the judgment given by the principal Bench. Earlier the Tribunal were of the view that the O.M. dated 10.9.93 is on going scheme, therefore, different orders being passed by the different Benches of the Tribunal in this regard, but now that matter has finally been decided by the Hon'ble Supreme Court in the case mentioned above, judgment relied-upon by the applicant's counsel cannot advance the case of the applicant any further. Since applicant has not been able to satisfy the court that after dis-engaging him some other persons were re-engaged, I do not think that the relief prayed by the applicant can be granted to him. Therefore, the O.A. is dismissed with no order as to costs.


MEMBER (J)

GIRISH/-