

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.94 of 2001

Thursday, this the 6th day of March, 2003

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

Suraj Prasad,
aged about 27 years,
son of Shri Ram Prasad,
resident of 300 Harwara,
Dhoomanganj, Allahabad.

.....Applicant.

(By Advocate : Shri K.P.Singh)

V E R S U S

1. Union of India,
through Secretary,
Ministry of Defence,
New Delhi.
2. Dy. Director General,
Army Headquarters, QMG'S Branch
Block No.III, R.K.Puram,
New Delhi - 110066.
3. The Director of Military Farm,
Headquarters, Central Command,
Lucknow -2.
4. The Officer Incharge,
Military Farm, Allahabad.Respondents.

(By Advocate : Shri R.Chaudhri)

ORDER

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

(i) to issue writ, order or direction in the nature of certiorari quashing the verbal termination order passed by the Officer Incharge, Military Farm, Allahabad dated 1.2.2000.

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- (ii) to issue writ, order or direction in the nature of mandamus, commanding and directing the respondents to regularise the services of the applicant.
- (iii) to issue any other order or direction which this Hon'ble Tribunal may deem fit and proper.
- (iv) to award cost to the applicant."

2. It is submitted by the applicant that he was initially engaged as a casual labour in January 1990 and since then he had been working continuously till 31.1.2000 (Certificate as Annexure-I). In 1992 Officer Incharge Military Farm, Allahabad sent requisition to Employment Exchange for sponsoring candidates for the post of casual labourers and applicant's name was also sponsored. Therefore, he was regularly appointed and his services were terminated by oral orders on 1.2.2000. Government of India had issued a scheme on 10.9.1993 wherein it was held that temporary status would be granted to those casual labour who have rendered one year of continuous service and regularised (Annexure-II) . He has submitted that applicant is entitled to get the benefit under the said scheme. Applicant requested for regularisation vide his representation dated 12.6.1998 (Annexure-III) but instead of regularising him his services were terminated orally on 1.2.2000 without giving any reason or giving him any notice. On 15.12.1998 even Dy. Director General issued an Office Memorandum holding therein that Casual Labour who have completed 240 days in previous 2 years i.e., 1996-97 will be considered for issue of appointment letter and remaining persons standing seniority will be maintained ⁱⁿ ~~in~~ for regularisation future (Annexure V). He has submitted that he has worked for more than 240 days in each calendar year since their initial appointment, therefore, he was also entitled to benefit under the said Office Memorandum. He has also relied on judgment passed by this Tribunal on 6.11.97

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in O.A. No.1749 of 1994. It has further submitted by the applicant that against the oral termination, he even gave representation on 04.02.2000 for being reinstated against the existing vacancies or anywhere else in the Military Farm (Annexure VII) but respondents have not even replied the same thus applicant had to file this O.A. seeking the above relief.

3. Respondents on the other have opposed the O.A. on the ground that the Military Farms, including the Military Farm at Allahabad are quasi-commercial organisation under the Ministry of Defence, Government of India. The main aim and object behind the establishment of Military Farms is to rear cross-bred and Frieswal cows for the purpose of supplying milk and milk products to troops. The Military Farm, Allahabad is engaged in the said activity under the overall charge of the Respondent No.4. The Military Farm, Allahabad has several hundred acres of land where this activity is carried out where cattle are maintained and bred as stated above. Respondents have also opposed that from the Financial Year stating 1st April, 1997, a new Accounting System was introduced for Military Farms in consultation with the Ministry of Finance to ensure the financial viability of Military Farms. As per the new scheme / system, the supply rates of Milk/Milk Products to troops are based on the actual cost of production of milk based on the cost index of the previous year plus 7.5% increase on account of escalation. It implies that the establishment and maintenance expenses of the Military Farm should not be increased more than 7.5% yearly to keep the Military Farm in profit and to retain the financial viability of the Military Farm.

4. During the seasonal agricultural jobs they used to engage seasonal labourers as and when required but after the Vth Pay Commission Report, the Prem Sagar Committee Report and NFF

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Reports, there were no vacancies of Casual Labour in Military Farms. Moreover, regular staff have also been declared surplus and steps are being taken to adjust the surplus staff through AG's Branch Army Head Quarter within the Ministry of Defence. In support of it they have relied on the letter dated 16.2.2001 (Annexure R-1). In view of surplus staff in Military Farms notices have been given to adjust them through A.G.'s office. They have further explained that earlier due to heavy harvesting and hailing operations they used to engage casual labour but this process has been completely stopped in view of fresh guidelines issued by Army Head Quarter vide letter dated 17.07.1999 (Annexure-2) therefore, all works are being carried through contractors w.e.f. September 1998 and no casual labour has been engaged after July 1998. Since he had been engaged as Casual Labour from 01.01.1992 as agriculture ^{per} mazdoor ^{per} intermittent periods. They have also submitted that the representation dated 12.06.1998 was never submitted to respondent no.4. They have thus, prayed that O.A. may be dismissed with costs. Respondents have relied on judgement given by Division Bench in the case of State of U.P. Versus Umesh Chandra Joshi and Another reported in 2002(1) AWC 323. They have also relied on J.T. 1996 (2) S.C. 455.

5. I have heard rival contentions of both the counsel and perused the pleadings. Even though applicant has stated that he was orally terminated w.e.f. 01.02.2000 but there is nothing on record to show that applicant had worked till 31.01.2000. The certificate annexed by applicant is dated 15.01.1997 and states that applicant was working on daily rates w.e.f. October 1992. (Page 20). There is no acknowledgement even on the representation filed by applicant at page 45 whereas respondents have annexed the letter dated 16.02.2001 showing clearly ^{that} ^{per} office of DDGMF had informed the office of Allahabad

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that action will be taken as per SAD 8/S/76 for adjustment of surplus staff through AG's office meaning thereby /contention of respondents that the staff has been declared surplus in Military Farm, Allahabad is substantiated. Annexure R-2 further shows that a policy decision has been taken at Headquarter level in 1999 that no Chowkidars either on casual or permanent basis will be employed by farm and the work should be ~~got~~ done through contractors. Certain works were required to be stopped forthwith keeping in view the low cost of production and better quality of hay. Therefore, we have to examine the claim of present applicant in this background. Respondents have stated categorically that after September 1998, they are getting all the work done through contractors and have not engaged any casual labour. In the present case applicant has relied on judgement given in O.A. No.948/99 but in that case respondents had not filed their full counter affidavit and in that case applicant therein had made a categorical statement in para 4.15 that after terminating their services the respondent no.4 used to engage fresh labourers from open market which was not denied by respondents so it was in those circumstances that the Tribunal held that termination was bad in law as applicant had put in more than ten years so it was held the respondents ought to have passed proper orders.

6. It is also relevant to mention here that those applicants had approached the court in 1999 itself when these annexures were not placed by respondents on record and they had merely filed a short counter whereas in the instant case applicant has only filed the case on 18.01.2001. There is no evidence in record to show that he had worked after September 1998, with respondents. On the contrary respondents have come out with a specific case that a policy decision has been taken to reduce the expenditure and even regular staff has been rendered



surplus who will have to ^{be} adjusted in other places. The question arises whether in these circumstances a direction can be given to the respondents to re-engage the applicant herein and to regularise him. In my considered opinion, no such direction can be given now as Hon'ble Supreme Court has held in JT-1996 (2) S.C. 455 that no direction can be given to respondents to continue a casual labour when there is no work for them. In this case Hon'ble Supreme Court held as under:-

"Appointment on daily wage basis is not an appointment to a post according to the Rules- The project in which the respondents were engaged having come to an end and that, therefore, they have necessarily been terminated for want of work, the court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies - Appeal allowed."

Similar view has been taken by the Hon'ble High Court in recent judgment delivered on 22.11.2001 reported in 2002(1) AWC 323 (LB) which for ready reference reads as under:-

"Employment - Termination - Validity-Respondent 1 purely temporary employee-Such employee has no right to post-Nothing to show that respondent 1 was regular appointee appointed after regular selection- He cannot claim to be continued in service - Termination order can be oral, particularly in respect of temporary/casual or ad-hoc employee - Even if one month's notice or notice pay not given - Termination order not illegal on that account- Tribunal's order setting aside termination order set aside- However, respondent 1 should be given one month's salary in lieu of notice."

7. Therefore, I get support from these decisions. Even otherwise in subsequent O. As this very Tribunal has already taken this view that no direction can be given to the respondents to reinstate the Casual Labour in the absence of any work. Applicant in the instant case has not given any name to suggest that after disengaging him the respondents have engaged any fresh Casual Labour. He has only made a vague averments, which is of no consequence. Moreover, I have already taken the same view in other cases of Military Farm and there must be uniformity in orders as different orders



cannot be passed in two identical cases. In view of the above, I do not see any reason to interfere in the matter. However, it is an admitted fact that applicant had worked with respondents from 1992 to 1998, therefore, respondents are directed to consider the applicant in preference to freshers and outsiders, in case they need to engage casual labour again in future and in case respondents decide to make fresh recruitment, applicant would be entitled to relaxation of age to the extent of his period of service ~~rendered~~ on daily wage basis.

8. With the above directions, this O.A. stands disposed off with no order as to costs.



Member (J)

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