

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1124 of 2001

Allahabad this the 05th day of August, 2002

Hon'ble Mr.C.S. Chadha, Member (A)

Ashok Kumar, Son of Sri Lal Babu, Resident of
186/8, Attarsuiya, Allahabad.

Applicant

By Advocate Shri O.P. Gupta

Versus

1. Director Small Scale Industries, Service Institute, E-17/18, Industrial Estate, Naini, Allahabad.
2. Development Commissioner, Small Scale Industries Nirman Bhawan, 7th Floor, New Delhi.
3. Union of India through Secretary, Ministry of Industry, Government of India, New Delhi.

Respondents

By Advocate Shri A.N. Shukla

O_R_D_E_R (Oral)

By Hon'ble Mr C.S. Chadha, Member (A)

The case of the applicant is that he worked as a Sweeper with the respondents in broken spells between 1984 and 1995 whereafter he was never taken on duty. He claims that in February, 1999 due to the promotion of one Shri Naresh Kumar the post of Sweeper fell vacant and he applied for the same. His application was rejected vide the impugned

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order on the ground that the post of Sweeper has become unnecessary as there is not enough work and therefore it had been decided to engage a person on contract for doing this part-time work, therefore, vide the impugned order dated 03.12.2001 the applicant was informed that he can also apply in future whenever such vacancy arises.

2. Learned counsel for the applicant has attacked this order on the basis of the fact that a regular vacancy did exist and the Director of Small Scale Industries, Allahabad did not have any power to convert a regular vacancy into a contract labour appointment. The person so engaged one Sunita Kumari was junior to him and therefore, his case should have been considered.

3. Learned counsel for the respondents states that the applicant worked only in broken spells between 1984 to 1995 and as per his own admission he worked between 1984 to 1987 and then again from 1994 to 1995 in broken spells. The name of the applicant is not on the Live Casual Labour Register and further he did not approach ^{the authorities} ~~the authorities~~ between 1995 and February, 1999, therefore, his application is also time-barred. Learned counsel for the applicant states that he had been assured that his name would be considered whenever a regular vacancy arises and therefore, as there was no vacancy he did not make any application between August, 1995 and February, 1999. I am unable to accept this

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argument unless it has been shown that ~~his~~ his application immediately after disengagement on 31.08.95 had been duly replied ^{to} by the department stating that he will be considered whenever there is any vacancy. I therefore feel that his original application filed in 1999 is time barred. ~~the~~

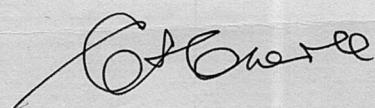
4. The main issue in this case is whether the department can abolish a regular vacancy and start ~~taking~~ ^{to} getting work done by a contract labour-Sunita Kumari. Learned counsel for the applicant has cited a Judgment of the Principal Bench in O.A.No.1462/01 passed on 16.01.02 (A.T.J. 2002 page 53) Jag Naresh Vs. Union of India and Others. I have perused the Judgment of the Principal Bench. I am afraid that Judgment does not apply in the instant case because in that case the question was of disengaged ^{ment of} employees already working and engaging somebody on contract. Here, nobody was disengaged after the vacancy by virtue of the promotion of Naresh Kumar. The department having realised that there is not enough work, decided not to fill the regular vacancy and start ^{to} taking work from a fresh appointee on contract. Nobody who was already working was disengaged. It is not possible for the Government to fill a post even if there is no requirement and there is not sufficient work. It is open for the Government to decide whether there is any requirement of work and in the interest of Govt.economy to abolish the post. I do not agree with the learned counsel for the applicant that the

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Government cannot abolish the post once created. The Judgment cited in the case speaks of circumstances where a person is already working and getting regular salary is asked to continue on a contract basis on a lower salary. The Hon'ble Supreme Court as well as the Principal Bench thought it necessary to interfere in such cases but the present case is quite different. I find no illegality in the impugned order of the 03.12.2001 by which the post has been abolished and department had decided to engage a Sweeper on contract basis. Learned counsel for the applicant has also cited a Judgment of the Hon'ble Supreme Court in State of Haryana Vs. Pyara Singh. The Hon'ble Supreme Court has observed that a casual labour has continued for a fairly long time - 2 or 3 years, a presumption may arise that there is regular need of work. Certainly such a presumption would be drawn in the absence of concrete evidence, but after the promotion of the earlier incumbent-Shri Naresh Kumar took a conscious decision to abolish the post because there was not enough work, therefore, this cited Judgment does not help the applicant.

5. I, therefore, reject the O.A. as being time barred and without any justifiable basis. No order as to costs.



Member (A)

/M.M./