

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.1358 OF 2004

ALLAHABAD THIS THE 8th DAY OF MARCH, 2006

**HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A**

Naval Kumar, S/o late Munni Lal, Aged about 31 years, R/o House No. 113, Om Purwa, Hajendra Nagar, Chakeri Road, Kanpur C/R Sri Pralad Kumar.

.....Applicant

(By Advocate Shri O.P. Gupta.)

V E R S U S

1. Union of India, through Secretary, Ministry of Small Scale Industries, Government of India, New Delhi.
2. Development Commissioner, Small Scale Industries, Nirmal Bhawan, New Delhi.
3. Director, Small Industries Service Institute, 107, Industrial Estate, Kalpi Road, Kanpur.

.....Respondents

(By Advocate: Sri S.P. Sharma.)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The question for consideration is whether the applicant who was engaged as a casual watchman with wages @ Rs 135/- per day, has crystallized any right for his continuance in the said status or for temporary status? The contention of the respondents is 'No' on the following reasons: -

(a) The then Director had with ulterior motive engaged the applicant which is in utter disregard to the general ban on engagement of casual labourers.

(b) The recruitment qualifications and age limit have not been followed in such engagement.

(c) While for one post of watchman, understandably a reasonable number of candidates only would have been requisitioned from the employment exchange, having arranged for as many as 18 (in which the applicant is the eighteenth individual) goes to prove that the entire show has been stage-managed to accommodate the applicant.

2. Brief facts as contained in the list of dates would suffice and the same is as under: -

Sl. No.	Date	Event
1.	2000	Applicant was initially allowed to work as Chowkidar in the office of respondent no.3 in the year 2000 on casual basis and while he was performing his duty successfully, a vacancy for the post of Chowkidar was notified and applications from suitable candidates were demanded through Employment Exchange.
2.	7.11.2003	Name of the applicant was also sponsored from Employment Exchange.
3.	13.11.2003	Applicant appeared before the Interview Board along with the required documents.
4.	24.11.2003	He was selected and appointed as Chowkidar w.e.f. 1.12.2003 at the wages of Rs. 135/- per day. Since then the applicant was provided duly continuously as Chowkidar and was paid wages every month.

5.	2.9.2004	Applicant made representation for grant of temporary status. Thereafter he was neither paid wages for the month of September, 2004 nor was allowed duty from the month of October, 2004.
6.	4.10.2004	Applicant submitted representation for allowing duty and to pay wages. But with no effect. Hence instant O.A. is being filed for seeking directions to the respondents to allow duty to the applicant and to set aside the oral termination.

3. Short counter had been filed, followed by a detailed counter. The contention of the respondents is, by and large, the same as mentioned in para 1 above.

4. Rejoinder has been filed, both to the short counter as well as to the main counter.

5. Arguments were heard and opportunity was given to the parties to furnish written submissions; applicant relied upon the decisions of 1993 SCC (L&S) 723 in re. D.K. Yadav Vs. JMA Industries and 2004 SCC (L&S) 205 in re. Talvinder Singh Vs. PO Labour Court & another. These would apply if the appointment of the applicant is otherwise legal, but he has been disengaged without notice. It is, therefore, to be seen whether the engagement of the applicant was fully as per Rules.

6. The case has been considered. The R. Rules for the post of Watchman prescribe the age limit as 25 years, relaxable to Central Government Servants upto 40 years in the case of General candidates and 45 in the case of S.C. and S.T. Candidates. Qualifications, however, are nil and preferred qualification prescribes elementary literacy with ability to read and write in the mother tongue.

7. The applicant was 30 years of age as on the date of engagement. This is certainly five years more than the

prescribed age limit. The applicant is stated to belong to S.C. community. According to the applicant, therefore, when age relaxation is upto 45 years for S.C. candidates and he is only 30 years, he is within the age limit. This is clearly a fallacy. For, relaxed age is 45 for scheduled caste, provided they are central Government employees. As such, the applicant cannot derive any benefit from that concession. However, if the general relaxation of age limit in the case of those who were already working as casual labourers is considered, to the extent of their total service which may be either continuous or in broken periods, relaxation can be granted (See **Ram Kumar v. Union of India, (1988) 1 SCC 306**). In the case of the applicant the same amounts to three years as he was engaged on casual basis in 2000, and as such, in 2003, all that could be given by way of age relaxation is that he should be maximum 25 plus 3 i.e. 28 years, whereas, admittedly he was 30 years at the time of his engagement in 2003. This means he was over aged. *Judgments cited, therefore, would not apply in their entirety.*

8. It is not known whether the ban imposed as early as in 1997 continued. In any event, when the applicant was engaged in 2000, the respondents did not seem to have objected to the same. Again, when in 2003 through employment exchange requisition was made, whoever was the authority, it had not taken care to hold a check upon the same. Even when the applicant had made a polite request for temporary status the respondents have not spoken a word about the illegality or irregularity in his casual engagement. Only they had prevented him from performing his duties without any order as such. It is only when the applicant had moved this Tribunal that all of a

sudden with all the objections the respondents have come up in justifying their action and blaming the then Director! Strange!!

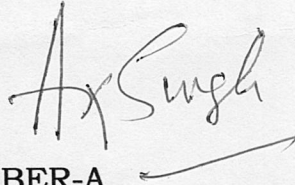
9. Now, what is the extent of right available to the applicant?

If the ratio in the case of ***State of Haryana vs Piara Singh (1992)***

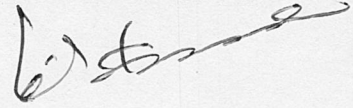
4 SCC 118 is applied, the services of the applicant cannot be replaced by another casual labourer. This is, however, subject to the condition that the engagement of the applicant is in accordance with the Rules. With the sponsorship of employment exchange and possession of qualification, the applicant fulfils these two conditions and in so far as age limit is concerned, he is over aged. Taking into account his over all experience of watchman in the very same organization for as many as four years, if provision for relaxation of age limit is available, the authorities may consider the same sympathetically and reinstate the applicant in services. In case, for any plausible reason, the authorities are disinclined to relax the age limit, the applicant cannot have any valid claim to insist upon the same.

10. The respondents are therefore, directed to consider the case of the applicant for age relaxation, keeping in view his past services of four years and his conduct during that period and if the competent authority is satisfied that this is a fit case wherein the age relaxation can be granted, suitable orders can be passed. It is hoped that the case of the applicant would be considered dispassionately, uninfluenced by any favour or aversion and the decision would be judicious.

11. With the above direction, the OA is disposed of and under the circumstances, there would be no order as to cost.



MEMBER-A



MEMBER-J

GIRISH/-