

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

(7)
Dated : 16/2/2005.

OA no. 989 of 2004

Diwakar Pathak

Applicant

By Adv : Sri R.K. Mishra

Versus

Union of India & Ors

Respondents

By Adv. Shri S. Singh

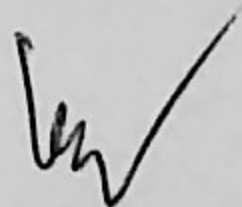
Hon'ble Mr. S.C. Chaube, Member A
Hon'ble Mr. K.B.S. Rajan, Member J

Today when the OA 989/04, Diwakar Pathak Vs. U.O.I. & Ors was called out Sri S.K. Pandey learned counsel for Sri H.S. Chaubey in OA no. 1239/03 intervened and made a plea that Sri H.S. Chaubey should be impleaded as necessary party in OA no. 989/04. This was however objected to by Sri R.K. Mishra, learned counsel for the applicant in OA no. 989/04. He invited our attention to annexure 25 of the present OA, which is the judgment dated 26.3.2004 of Division Bench of this Tribunal, disposing of the OA no. 1239/03 filed by Sri H. S. Chaubey and OA 566/03 filed by Sri Diwakar Pathak by a common order. While dealing with OA 1239/03 the Tribunal has observed as follows:-

"...It cannot be gain said that in case Diwakar Pathak is found to have completed three years approved service on the date of alternative appointment, he would be entitled to replace Sri H.C. Chaubey who was working as substitute but in case Diwakar Pathak was not found entitled for alternative appointment in terms of the discussion afore stated then rule that a substitute will not be replaced by another substitute govern."

2. Referring to the contention of Sri S.K. Pandey that services rendered by Sri Diwakar Pathak as substitute from 15.10.2000 to 14.09.2001 should not be taken into reckoning for the purpose of computing three years of approved service in view of the fact that the applicant had already been working there as substitute. The Tribunal has observed that it is for the SSPO to decide this question and pending decision the parties shall maintain status quo as on date.

3. In the opinion of the Tribunal the impugned order dated 29.01.2003 communicated to the applicant vide letter dated 08.03.2003 is liable to be set aside and the SSPO, East Division Varanasi was directed to pass a fresh order after proper self direction keeping in mind the reply given by Diwakar Pathak to show cause notice and after recording a categorical finding period of approved services rendered by the applicant before he was given alternative appointment. Accordingly, the order therein was set aside and the respondent SSPO was directed to pass a fresh order in accordance with law in the light of observations made by this Tribunal. It was also directed that

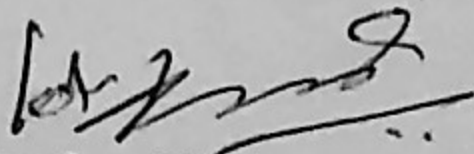


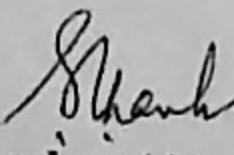
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decision may be taken in this regard within a period of two months from the date of receipt of a copy of this order.

4. As the basic facts of the two cases in OA 1239/03 and OA 566/03 filed respectively by Sri H.S. Chaubey and Sri Diwakar Pathak have already been adjudicated upon by the Tribunal and no Misc. Application has been filed by Sri S.K. Pandey for impleadment of Sri H.S. Chaubey, we are not inclined to allow the impleadment of Sri H.S. Chaubey as necessary party. This will be without prejudice to the right of Sri H.S. Chaubey to seek appropriate remedies available to him under law.

5. List this case on 25.02.2005


Member (J)


Member (A)

ca 12
ca files
RA not filed
by
24.03

⑧ feen'son
25-2-05
List in admission
on 17-3-05

⑨ feen'son
17-3-05
List in admission
on 13-4-05

ca 13
ca filed
by
24.03