

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 19th day of OCTOBER 2005.

Original Application No. 1076 of 2004

Hon'ble Mr. K.B.S. Rajan, Member-J

Jaipal Kashyap, S/o Sri Bholey Ram
R/o Village Sunoor, P.O., Sundari,
BAREILLY.

.....Applicant

By Adv: Sri R.P.S. Kashyap

V E R S U S

1. Union of India through Secretary,
Indian Council of Agricultural Research (ICAR),
Krishi Bhawan,
NEW DELHI.
2. Director, Indian Veterinary Research Institute
(IVRI), Izat Nagar,
BAREILLY.
3. Incharge, Live Stock Production and Management
(IVRI),
BAREILLY.
4. Chief Administrative Officer, IVRI, Izatnagar,
BAREILLY.

.....Respondents.

By Adv: Sri N.P. Singh

O R D E R

The short point involved in this case is whether the applicant, a casual labourer right from 4.2.91 is entitled to the benefit of temporary status in accordance with the provisions of OM dated 10.09.1993 of the DOPT which was adopted by the respondents vide order dated 23.11.1994.

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2. The case of the applicant which has also been admitted by the respondents in para 8 of their Suppl. CA is that the applicant had worked for 240 days in the year 1991-92. It has also been admitted by the respondents that subsequently also the applicant had been working as a casual labour though in pursuance with the order of the Hon'ble Allahabad High Court. However, the contention of the respondents is that from 01.09.1993 to 10.09.1993 the applicant was not engaged and as such one of the twin conditions fastened to grant of temporary status remains unfulfilled and as such the applicant is not entitled to the temporary status. The respondents have also raised a preliminary objection as to the limitation involved in the matter.

3. Arguments have been heard and the documents perused.

4. The Apex Court in the case of ***Union Of India v.***

Mohan Pal, (2002) 4 SCC 573, has held as under:-

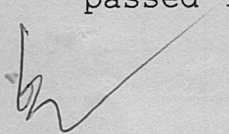
".... the Scheme of 1-9-1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week)."

5. In so far as reflection of the above conditions is concerned, the respondents have not erred.

Bh

However, in telescoping the rule position on the facts of the case, there appears a definite error. The condition that the individual should have been on the role on 01.09.1993 was misconstrued in that absence on that day, either on account of the individual himself or on account of there being no job on that day, would not mean that the individual is not entitled to the benefit of temporary status. Such a situation would have been under fortuitous circumstance. The spirit in prescribing that on the date of issue of the order the casual labour must be on rule only means that he should not have been disengaged months or years in advance in which event alone he cannot claim the benefit of temporary status. However, in the instant case the applicant has been serving continuously from February 1991 though with intermittent recess or break and it was a coincidence that such an intermittent break fell during 01.09.1993 to 10.09.1993 for which the applicant cannot be faulted. Thus in this case the applicant fulfills the twin conditions.

6. As regard the preliminary objection, though the scheme was implemented from 23.11.1994, the records do show that the applicant has been vigilante and has been perusing his matter of regularization right from 1992 and even as per the version of the respondents this is the third round of litigation. Again the impugned order dated 19.07.2004 came to be passed in the wake of an order-dated 30.05.2002 in

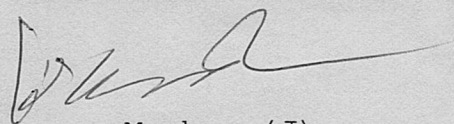


OA 502 of 2002. The claim of the applicant is on the basis of continuous cause of action. As such the limitation does not apply.

7. In view of the above the OA succeeds. Order dated 19.07.2004 (Annexure 1) is quashed and set aside. The respondents are directed to process the case of the applicant for grant of temporary status w.e.f. 01.09.1993 and the applicant shall be treated as such from that date but the benefit of actual pay and allowance shall be made available to him from the date of filing of his earlier OA 502 of 2002 (30.04.2002) when he had filed the said OA for temporary status. Arrears in this regard should be made available to the applicant. Break during the period from July 2004 till the date of reinstatement would be regularised in accordance with law.

8. Needless to mention that the applicant shall be reinstated forthwith, latest within six weeks from the date of receipt of copy of this order.

9. The above direction relating to awarding temporary status and payment of arrears shall be complied with within a period of six months from the date of communication of this order. No costs.



Member (J)

/pc/