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CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH :ALLAHABAD

REVIEW APPLICATION NO.85 OF 2005

IN

ORIGINAL APPLICATION NO. 374 of 2003

ALLAHABAD THIS THE 08<sup>th</sup> DAY OF May, 2007

HON'BLE DR. K.B.S. RAJAN, J.M.

Vijay Prakash Gupta & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

O R D E R

There were in all six applicants in OA A No. 374/03 claiming temporary status out of whom, as only one Shri Rajnu Lal Yadav fulfilled the twin conditions, the said OA was allowed in respect of the said individual, while the OA in respect of others stood dismissed.

2. It is not exactly known, as to how even the applicant Rajnu Lal Yadav whose OA was allowed had filed the Review application jointly with others. Nevertheless, it comes handy to make certain observations in regard to this applicant (Rajnu Lal Yadav), as according to the respondents, vide their counter, the contention is that he was not engaged as casual labourer on 1<sup>st</sup> September 1993 and hence, though the Tribunal had allowed the OA the respondents in para 9 of the counter averred as under:-

  
"In fact, Shri Rajnu Lal who has been granted temporary status by the Hon'ble Court was also not on the roll as on 1-9-

1993 and hence, he is also ineligible for grant of temporary status."

3. The above contention of the respondents is contumacious. For, the Apex Court has in the case of **Director of Education v. Ved Prakash Joshi, (2005) 6 SCC 98** held as under:-

*The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order..... Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. (Emphasis supplied)*

4. The contention that the said Rajnu Lal ~~had not~~ was not on the roll of the respondents as on 01-09-1993 can easily be disproved by referring to the correspondence between the said individual and the station Commander. Vide Annexure RA-4, the said Rajnu Lal stated that he worked upto 3<sup>rd</sup> September, 1993 and he was given temporary pass upto 30-09-1993. This has not been controverted by the Station Commander in his reply vide Annexure RA 9 dated 5<sup>th</sup> November, 1993. Thus, whatever has been stated in the counter goes contrary to the records. Again, at the time of hearing one Lt. Col Singh who was present in the Tribunal with the records, as indicated in para 7 of the order under Review, had not indicated anything about non fulfilment of this requirement. In fact there was no objection at all to the contention of the applicants including the said Rajnu Lal that the services of the applicants were verbally terminated on 03-09-1993, vide para 3(c) of the order under Review. Thus, the statement in the affidavit, sworn in by Lt Col G.S. Singh, Officer Commanding, that Rajnu Lal ~~did~~ was not on the employ on 01-09-1993 is not based on records and amounts to false statement.

5. In fact the requirement of being in the employ as on 01-09-1993 did not strictly mean that one should be present or engaged on 01-09-1993. Even if one was allowed to function on 2<sup>nd</sup> or subsequent dates in September, 1993, and not on 01-09-1993, the same would amount to fulfillment of the condition of being engaged on 01-09-1993. Assuming without accepting if the said Rajnu Lal was not on the employ on 01-09-1993 or thereafter, the respondents have no authority to sit on appeal over a judicial order passed by the Tribunal. As held in the case of *Ved Prakash Joshi (supra)* "If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable." Admittedly this has not been done by the respondents. In order to avoid *suo motu* contempt proceedings, the respondents shall with a sense of responsibility comply with the order in so far as Shri Rajnu Lal is concerned, if not already done and file a compliance report in this regard. If the said Rajnu Lal has already been granted temporary status, confirmation should be given in this regard to the Tribunal, by way of an affidavit duly sworn in by a responsible officer.

6. Now, in so far as others are concerned, the contention of the Review Applicants is that the records shown at the time of hearing on the basis of which, a finding was arrived, that the other applicants had not fulfilled the requisite condition of 240 days of service in a year are only fabricated documents, cannot be treated as one of error on the face of records. If the applicants are so sure that the records are fabricated, they should prove the same to the hilt and not just make a contention for review of the earlier order. They may, for this purpose, take recourse to the provisions of Right to Information Act to requisition the documents from

the respondents to prove their case. In that event, it could be possible to review the case. With the existing documents, it cannot be held that the documents produced by the respondents are fabricated. Hence, the grounds not satisfying the conditions for review, the Review Application is dismissed.

  
MEMBER-J

GIRISH/-