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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 605 of 1987

Suraj Prakash

.. Petitioner

Versus

Union of India & Ors

.. Respondents

Hon. Mr. D.K. Agrawal, Member (J)

Hon. Mr. K. Obayya, Member (A)

( By Hon. Mr. D.K. Agrawal, Member (J) )

1. This application Under Section 19 of the Administrative Tribunals Act 1985 has been filed with a prayer that the order dated 9.6.1987 terminating the service of the petitioner be declared illegal, in-operative and without jurisdiction and the directions be issued to the respondents to reinstate the petitioner.

2. The facts are that the applicant was engaged as Water man on 5.5.1986 in the local office of respondent No.1 situate at Allahabad for a temporary period upto 30.6.1987. However he was continued in service with intermittent breaks till 9.6.1987. His service was terminated on 9.6.1987. The petitioner has alleged malice as well as pointed out breach of the provisions of Industrial Dispute Act inasmuch as he was neither given notice before the

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retrenchment nor paid any compensation. The respondents in their Counter-affidavit have not at all dealt with the plea of malice or the breach of the provisions of Industrial dispute Act. One Shri A.K. Misra, Deputy Collector Central Excise Allahabad has sworn the Counter affidavit pleading that the petitioner had not completed 206 days and therefore he was not eligible to be considered for regularisation. The respondents have also take the shelter of Circular dated 26.10.1984 (Annexure C.A-I). The said Circular says that one should have completed 206 days in each of the two years to be eligible for consideration for regularisation. The pleading however is to the effect that one is required to complete only 206 days. The mistake has occurred probably on account of the fact that the Counter-affidavit as a whole has not been drafted with due care and attention. By way of illustration it may be pointed out that in para no. 3 of the Counter-affidavit what has been described as Annexure C.A.I is actually Annexure C.A.2 and vice versa. Therefore the plea of the respondent may be understood to mean that unless one completes 206 days of service in each of the two years, he or she cannot be considered for regular appointment.

3. The most unfortunate part is that the orders of appointment of the petitioner except one dated 5.5.1986 have also not been produced before us. The Department has choosen to produce for our perusal only carbon copies of the certificates issued in each succeeding month certifying the number of days of duty put in by the petitioner in the preceding month. These certi-

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ficates were probably issued for the purposes of the payment of wages. It is obvious that these certificates were prepared on the basis of some documents. The normal rule is that primary evidence should be produced before the court. In fact secondary evidence cannot be looked into unless there is evidence of the loss of primary evidence. The proper course was either to produce Muster-roll wherein the attendance of the petitioner was noted down each month or the appointment letters, to enable us to exactly verify the period for which the petitioner was actually engaged. We do not know why the department withheld the original documents from us. We cannot appreciate this indifference. However even the said carbon copy of the certificates indicate that the petitioner had worked for 271 days from 5th May 1986 to 4th May, 1987. Thus he has duly completed 206 days in the first year of service. The department did not give him any occasion to complete requisite number of days in the second year by terminating his service on 9.6.1987. Therefore it calls for an inquiry as to whether the termination order was done in a bonafide manner or in an arbitrary manner. It is again unfortunate that the department has not brought complete facts to our notice. Do they keep a register indicating the names and other particulars of the Casual labour including the number of days worked with them? whether the petitioner was a junior most employee? whether the petitioner was guilty of some misconduct?

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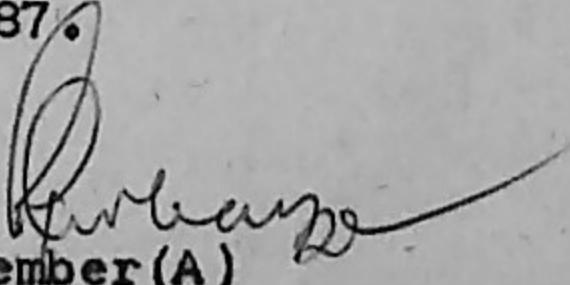
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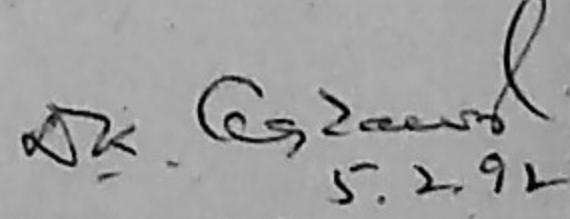
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Whether the department did not have the sanction to engage Casual Labour? In this manner the department has failed to come out with correct and full particulars to enable us to judge that the action of the department was just and proper in terminating the service of the petitioner. We fail to appreciate the conduct of Sri A.K. Misra Deputy Collector Central Excise, Allahabad who had chosen to swear the affidavit which does not furnish complete facts. We were not addressed even by the counsel of the department in this regard. Thus we are left with the allegations of the petitioner to the effect that his termination was arbitrary. In the circumstances we have no option but to reply on the facts as stated in the petition. However we consider that it may not be proper to direct reinstatement of the applicant forthwith. All the same the applicant has to be engaged. We consider that a direction be issued to engage him in the next first available vacancy.

4. In the result we allow the petition in part. We direct the respondents to engage the petitioner as Casual Labour in the first next available vacancy and consider him for regularisation reckoning his seniority w.e.f. 5.5.1986 (initial date of his recruitment) notwithstanding the fact of termination of his services w.e.f. 9.6.1987.

  
Member (A)

  
Member (J)

5th Feb,  
Dated: 28th January, 1992

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