

CENTRAL ADMINISTRATIVE TRIBUNAL

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ALLAHABAD BENCH

Allahabad this the 6 October 1994.

Original Application no. 938 of 1988.

Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

Chandramani S/o Shri Bindan Lal,

aged about 40 years, R/o 14-B Prem Vatica,

Chandan Nagar, Saharanpur. Applicant.

By Advocate Sri Rakesh Verma.

Versus

Senior Supdt. of Post Offices,

Saharanpur and others Respondents.

ORDER

By Hon'ble Mr. K. Muthukumar, A.M.

1. The applicant ~~is~~ this has prayed for an order or direction of this Tribunal to the respondents to include his name in the list prepared by the respondents for absorption of Casual Labourers as per order of the Post Master General, Lucknow, dated 23rd March 1988 and to consider the case of the applicant for absorption in the department. The admitted facts in this case are that the applicant was appointed as Pharmacist in the P & T Dispensary at Saharanpur on casual basis for three months initially and the appointment was continued from time to time and his casual appointment was discontinued from 5.2.1987 and he was not re-engaged. Main averments in the application are that the applicant has continued in service for 14 months and has acquired the right of becoming regular after completion of 240 days, but was, however,

disengaged from service with effect from 5.2.1987 without any show cause notice or order, in violation of relevant provisions of Industrial Dispute Act, 1947. Aggrieved by this the applicant has sought for the direction from this Tribunal as mentioned above.

2. The respondents have contested the application and have maintained that the applicant had worked only on the casual basis from time to time and his engagement was in leave vacancy of the regular incumbent and, therefore, there was no question of regular absorption of the applicant. They further averred that his representation was considered but as there was no vacancy of Pharmacist, he could not be engaged and he was engaged only on the short term vacancy caused due to temporary absence of regular incumbent and, therefore, the applicant had not acquired any right to a regular post.

3. The learned counsel for the applicant argued before us that the respondents have not disputed the facts of the 240 days of the continuous service and, therefore, he deserves to be regularised in terms of the D.G. P&T's letter dt. 30.8.1984 annexed as Annexure-1 followed by P.M.G's circular dated 23rd March 1988 annexed as Annexure-3 by which the subordinate Officers were directed to furnish the details of Casual Labourers who have been working more than one year continuously, in order to enable the department to prepare the scheme on rational basis and for which purpose the subordinate Officers were directed to intimate the details of the post

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and persons working as Casual Labourers for more than one year. In the light of the circulars and in view of the fact that the applicant had worked for more than 240 days, his name should have been considered for regular absorption. The learned counsel for the respondents, however, contended that the applicant had worked on casual basis from time to time and he was engaged against the short term vacancies and, therefore, did not have any right for any regular absorption.

4. We have heard the learned counsel for the parties. From the facts and material placed before us it is seen that the applicant had worked as Pharmacist on a casual basis against the vacant posts, of Pharmacist in the P & T Department, Saharanpur, from 18th June 1986 and 5th February 1987, as per the certificate issued by the Medical Officer Incharge of the said Dispensary. This fact has not been specifically denied by the respondents although they have stated that he was engaged on short term vacancies from time to time. The averments made in paragraph 12 of the counter affidavit were as follows:-

"It is absolutely wrong to allege that after completion of 240 days continuous service the petitioner has acquired a right. Since the petitioner's engagement was against the leave vacancy of the regular incumbent, the question of regular absorption of the petitioner or continuance in service did not arise.

5. From the above it is clear that fact of continuous service of the applicant of 240 days has not been specifically denied and in terms of the decision of the Apex Court laid down in National Federation of P & T employees Versus Union of India and another (1988) See (L & S,) 138

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the services of the applicant should have been considered for regularisation. The averments made in the counter affidavit and the contentions of the learned counsel for the respondents are not convincing in the light of the undisputed facts of the continuous services of the applicant of 240 days even though such engagement was against the short term vacancies. We are, therefore, inclined to hold that the applicant's contentions is justified ^{and} that he should have been considered for regular absorption in the light of the Supreme Court's judgement Supra.

5. We accordingly direct the respondents to include the name of the applicant in the panel of candidates for regular absorption subject to his otherwise being found suitable for his appointment with effect from the date of the regular vacancy either at the original place where he worked on casual basis or any other place ~~where~~ depending on availability of the vacancy.

6. In the light of the above discussions we allow the application and there shall be no order as to costs.

JPS

Member (J)

J. M. L. M.

Member (A)

am/ 6-10-1994