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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

560
5/3/87

Original Application No. 1190 of 1988

Lochan Singh

:::::::

Applicant

Versus

Union of India
& Others

:::::::

Respondents

Hon'ble Mr. S.Das Gupta, A.M.
Hon'ble Mr. T.L. Veram, J.M

(By Hon'ble Mr. S.Das Gupta, Member 'A')

In this original application filed under
Section 19 of the Administrative Tribunals Act, 1985,
the following reliefs have been prayed for;

1. That the respondents be directed to
pay the same salary to the applicant
as is payable to regular Draftsman in
the scale of Rs.1200-2040.

2. That the respondents be directed to
absorb the applicant in regular ser-
vice in the department.

2. The facts of this case giving rise to this
application are that the applicant was employed on
08.3.1985 by the respondent no.2 as a Muster Roll
Employee on daily wages. He possessed a Draftsman
(Civil) from Industrial Training Institute, Agra.

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The petitioner claimed that from the very beginning he has been performing the job of a Draftsman and was known as Assistant Draftsman. Although he has been performing the same job and duties as regularly recruited Draftsman of the department, he has been paid only wages on daily basis at the rate of Rs.16/- per diem which gradually increased to Rs.25/- per diem.

3. The petitioner further claims that there are many post of Draftsman lying vacant in the department in which he is working but he ~~has~~ not being absorbed in any of these posts.

4. Resisting the claim of the petitioner, the respondents have submitted in their Counter-reply that the petitioner never worked as a Draftsman, but was engaged on various job purely as a daily rated casual employee from time to time on daily wages ranging from Rs.14/- to Rs.25/- per diem. They have further stated that the petitioner was not sponsored by the Employment Exchange. As regards his absorption as a Draftsman, they have stated that there is no post in Agra Circle where the petitioner is working. They have also stated that the petitioner has no right to be regularise in service.

5. . . . Keeping in view the rival averments made by the two parties, we can frame the following issues for consideration;

A. Whether the petitioner had performed the duties of a Draftsman and should

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therefore be paid same salary as payable to Draftsman.

B. Whether he has a right to be absorbed as a Draftsman.

C. Whether he has a right to be regularise in service.

6. We have heard the learned counsel for both the parties and carefully perused the records.

7. With regard to the issue framed at 'A' of para 5, while the first part of the question raised is a question of fact, the second part is a question of law. ^{in position relating to the} The question of law is quite clear since the principle of "equal pay for equal work" has been unambiguously enunciated by the Supreme Court. The applicant himself cited in the O.A. the decision of the Supreme Court in the case of Daily Rated Casual Labour employed under Posts and Telegraphs Department Versus Union of India & Others (A.I.R. 1987 S.C. page - 2342) in which it has been held that the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres is not tenable. The reference can also be made in this regard to the decision of Supreme Court in the Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and Others, Petitioners V. State of Karnataka and others etc., Respondents (AIR 1990 Supreme Court, 883). In that case, making a reference to a number of decided

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cases like, Randhir Singh Vs. Union of India(1982) 1 - SCC 618 :(AIR 1982 SC 879), Dhirendra Chamoli Vs. State of U.P.(1986) 1 SCC 637, Surinder Singh Vs. Engineer-in-Chief, C.P.W.D.(1986) 1 SCC 639, R.D. Gupta Vs.Lt. Governor, Delhi Admn.(1987) 4 SCC 505 : (AIR 1987 SC - 2086), the Court observed as follows;

"We have referred to several precedents all rendered within the current decade to emphasise upon the feature that equal pay for equal work and providing security for service for regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our social-istic polity."

8. There is, therefore, no room for doubt that incase the petitioner has actually been made to work as Draftsman, by the principle of "equal pay for equal work", he ought to have been given salary atleast at the minimum of the pay scale of regular Draftsman but whether or not he should be paid as such would depend on question of fact i.e. whether or not he really worked as a Draftsman. The respondents have categorically stated in their Counter-reply that the petitioner has never worked as Draftsman. From Annexure '7' to '11' filed with the Counter-reply, it appears that the petitioner was worked as Drawing Assistant(Tracer), Highly skilled man for tracing site plans, Highly skilled man (Tracer) from time to time. The only document which the applicant has produced in support of his claim

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that he worked as a Draftsman is a certificate at Annexure-2 to this application, given by the Dy. Superintending Archaeologist. It has been certified in this document that the applicant has worked as Assistant Draftsman during certain period. On the basis of these facts on records, We are unable to come to the conclusion that the applicant had actually worked as Draftsman either from the very beginning or during any period of his service as a Muster Roll Employee. We cannot, therefore, grant him the relief of "equal pay for equal work".

9. So far as his absorption as Draftsman is concerned, the applicant clearly has no right to such absorption automatically ~~of~~ as we are not in position to conclude that the applicant had been actually working as Draftsman. However if the petitioner ^{does} ~~has~~ possess the required qualification for the post of Draftsman, he shall have a right to be considered for any vacant post available either in Agra Circle or any other unit of the respondents' department and in this regard he shall be considered as a departmental candidate.

10. This leads us to the consideration of the issue relating to the petitioner's claim for regularisation in service. The applicant has enclosed copies of the Record Card to his Supplementary Affidavit. The copies of this card have also been enclosed to the Supplementary Affidavit affirmed by Shankar Nath, Superintending Archaeologist. We have carefully gone

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through this record and we are find that the no. of days worked by the petitioner in different years is as follows;

<u>YEAR</u>		<u>No. of Days</u>
1.	1984-85	:: 26days
2.	1985-86	:: 100+140=240days
3.	1986-87	:: 81+141=222da-ys
4.	1987-88	:: 81days
5.	1988-89	:: 45days

11. Unlike the Railways and P & T, the respondents do not have any separate scheme for regularisation of service of Casual Workers. In the absence of separate scheme, the instructions contained in the Department of Personnel Office Memorandum no.49014/19/84-ESTT(C) dated 26.10.1984 would be applicable in this case. In terms of these instructions, the Casual Labour who has put in atleast 240 days (206 days in respect of department observing fivedays week) of service as Casual Labour, including broken period of service during each of two years shall be eligible for regularisation provided they have been employed through employment exchange. A one-time exemption from the requirement of being sponsored by the employment exchange ^{was} ^{by him} ~~by the~~ given Department of Personnel O.M.No. 49014/18/84-ESTT(C), dated 07.5.1985. The applicant shall be entitled to the benefit of this exemption as his appointment was prior to the date of issue of this Office Memorandum. Also, he has completed 240 days in the years 1985-86 and 222 days in 1986-87. It be.

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It has been contended by the applicant in para 5 of his Supplementary Affidavit that the department in which he is working has five day week. This has not been controverted by the respondents. In view of the absence of any averment to the contrary, we have no reason not to accept the contention of the applicant. In this view of the matter, it is clear that the applicant has fulfilled the requirement laid down in the Department of Personnel O.M.No. 49014/19/84-ESTT(C) dated 26.10.1984 having completed more than 206 days work in two successive years i.e. 1985-86 and 1986-87. Requirement of being sponsored by the employment exchange is not applicable to him in terms of department of personnel O.M. No. 49014/18/84-ESTT(C), dated 07.5.1985.

12. The respondents had also raised a preliminary objection that the petition is time-barred^{as} and cause of action arose in 1985. This plea in our view has no force since the cause of action i.e. non regularisation of the petitioner in service is a continuing one.

13. In the result, the application is disposed of with the following directions;

1. The respondents ^{are} directed to consider the question of regularisation of the applicant in any Group D post in any of the vacancies arising in the department of the respondents.

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2. Till the applicant is regularised as directed in 1 above he shall be retained as Casual Worker in the office of the respondents. In preference to ~~the~~ Casual Workers recruited after the initial date of appointment of the applicant.
3. The applicant may apply for recruitment against any vacancy of Draftsman *arriving in the respondents' department* and incase he fulfills the required essential qualification, he shall be considered as a departmental candidate.

14. The parties shall bear their own costs.

[Signature]

Member (J)

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Member (A)

Allahabad, Dated 15 February, 1994

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