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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1305 of 1993

Allahabad this the 18th day of Jan 1995

Hon'ble Mr. S. Das Gupta, Member(A)
Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Chandra Sen S/o Moti Ram R/o Ward no.1, Town Area
Rudain, District Badaun.

Applicant.

By Advocate Shri P.K. Kashyap

Versus

1. Union of India through Secretary Department of
of Post Offices, New Delhi.
2. The Superintendent of Post Offices, Badaun.
3. The Nirdeshak, Postal Services, Bareilly

Respondents.

By Advocate Shri S.C. Tripathi.

O R D E R

By Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

This petition has been filed by
Sri Chandra Sen pleading that he was appointed
as a C.P. Chowkidar by the respondents at Rudain
Badaun Sub Post Office on 12.11.1991 after process
of selection vide letter of appointment(Annexure-2).
Under the terms and conditions of his service, his
appointment was contractual and his services were
liable to be terminated at any time by giving a
notice. He pleads that his services have been
terminated without giving him one months notice
or one months salary in lieu of notice. He pleads
that after joining service he had worked for one

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year 8 months and six days without break till the date of his termination which is more than 240 days and thus, he is entitled for regularisation of his services and should not have been dismissed. There was no complaint against him about his working and the post of Chowkidar still existed in that post office. His services were terminated with letter dated 19.7.1993 on the basis of some order (mentioned in the letter) dated 23.6.1993 but the petitioner had not been supplied with the copy of order dated 23.6.1993. He claims that his termination date - 19.7.1993 is against the principles of natural justice and article 14 and 16 of the Constitution of India. He belongs to Schedule Caste and he is a poor person. He had filed representation against his termination order which is Annexure A-3. He alleges under the grounds for relief that his junior persons are still continuing in service. He has, thus, prayed for a Writ quashing the termination order dated 19.7.1993, directing the respondents to regularise his services and to confirm him on the post of C.P. Chowkidar and to pay him his salary with all benefits.

2. The respondents in reply have admitted that the applicant was appointed to the said post after names of candidates had been sponsored from the Employment Exchange and he had remained working on that post since 14.11.1991 to 20.7.93. The Regional Office of the respondents had reviewed

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the appointment files and, thereafter, had asked the Sub Divisional Inspector(P.O.) through letter dated 23.6.1993 to explain as to how appointment of the applicant was made despite a ban order passed by D.G.(Post) New Delhi no.45-95/87S.D.B.-I dated 12.4.1991. Under this letter, the appointment of the petitioner was found to be irregular and was ordered to be terminated. The termination order was passed on 19.7.1993 under those two letters. It is pleaded that the applicant was only a Daily Rate Worker on the basis of minimum of pay scale for Group 'D' employees. He was not entitled to regularisation and confirmation as under the letter dated 12.4.1991(Supra) temporary status was to be conferred on Casual Labourers in employment who were there working on 29.11.1987 and who continued to be currently employed and had rendered continuous service of at least one year. The petitioner did not fall in the category of such casual labourers. The circular was circulated under endorsement of Chief Post Master General(U.P.), Lucknow under letter no.Rectt./R-39/ - VI, dated 28.6.1991 banning engagement of fresh casual labourers. It is pleaded that under the ban and instructions of D.G.(Post), the post of C.P. Chowkidar in Rudain, P.O. stood automatically abolished. It is pleaded that the appointment of was in the nature of a contract, liable to be terminated at any time by giving notice and the order dated 19.7.1993 was in compliance with the conditions of service of such notice. They denied that his

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services were terminated illegally for making room for their own man as no appointment has been made to the said post of any other person. They have denied that any junior persons to applicant were in service. They have, thus, prayed for dismissal of the petition. In the rejoinder filed, the petitioner has reiterated the averments made in the petition.

3. The main grievance of the petitioner is that his services being in a nature of contract, could not be terminated without a notice. Annexure A-2 is the appointment letter which we have perused and which lays down this condition as argued by the learned counsel. We have seen that it is clearly mentioned in it that appointment of the petitioner is liable to be terminated at any time by giving notice. No period of notice is mentioned in this letter, rather it mentions that services can be terminated at any time. Annexure A-1, the order dated 19.7.1993 is a document in writing which is in the nature of termination order. In our opinion this is a document in writing which would meet the requirement of a notice in writing for termination of the contract. The learned counsel for the petitioner has failed to show us anything which may require a separate notice, prior to termination of the services before issuance of termination order. The contention is, thus, rejected.

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4. Next, the learned counsel argued that it is an admitted case that the petitioner had worked for more than one year eight months and six days and, thus, had completed more than 240 days of service. For this reason, he claims that he should have been regularised, as he had acquired temporary status. However, learned counsel has failed to bring to our notice any such circular, rule or scheme under which the casual labour become entitled to regularisation on completion of 240 days. We are aware that in a case of Daily Rated Casual labour employed under P & T Vs. Union of India reported in (1988) 1 S.C.C. page 122 under orders of Supreme Court, a scheme was framed by the department of Telecommunication known as Casual Labourers (grant of temporary status and regularisation) scheme which was put into operation from October 1, 1989. However, neither the petitioner has claimed that he was entitled to regularisation under that scheme nor has been able to show that he fulfilled the conditions under the said scheme. The scheme has not even been shown to us or placed on the record. On the contrary, the respondents have clearly taken the plea that persons who were in service on 29.11.1989 and had continued to work thereafter for a continuous period of one year, only, were entitled to acquire the temporary status for consideration of their regularisation. In view of that scheme, engagement of fresh casual labourers was totally banned in June, 1991. In these circumstances, it is doubtful if, the petitioner would fall

within the purview of that scheme. Since, we do not have the benefits of having the terms and conditions of the said scheme before us, we would ^{leave} ~~let~~ the matter to be considered by the respondents by treating the petitioner as a casual labourer.

5. Since the petitioner was only a casual labourer ^{and} we have not been shown any rule requiring one month's notice or one month's salary in lieu of notice before termination of his services, The contention ^{is} ~~has~~, thus to be rejected.

6. The petitioner has made a balded statement in his pleadings that his juniors have been retained in service while he has been terminated and this is violation of Article 14 and 16 of the Constitution of India. This fact has been specifically denied by the respondents. The petitioner has not given the names of any such alleged junior who have been retained in service. In these circumstances, the averment is taken to be only an unsuccessful attempt to bring the petitioner within the jurisdiction of this Tribunal.

7. Last of all, the learned counsel for the petitioner has argued that termination order is in violation of Section 25 F of the Industrial

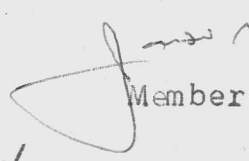
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Disputes Act, 1947 as the respondents department is an industry and the petitioner is a worker who had worked for more than 240 days in the year 1992. We find that this is not a pleaded case of the petitioner and ^{is} only an after thought while addressing the arguments. This, even if, allowed to be raised in the manner it has been raised, would show that the petitioner should have approached the Industrial Tribunal under the I.D. Act, 1947. Considering that, in fact this remains the only ground as other grounds are found to be not made out, this Tribunal would refuse to entertain a petition based on such grounds in a Writ Petition filed directly. The applicant, however, is free to approach the Industrial Tribunal with those pleas as Department of Post has been held to be an Industry under various pronouncements rendered by the Tribunal.

8. On the basis of the reasons mentioned above, we find no merit in this petition. The respondents, however, are under an obligation to consider whether the petitioner would fall within the Casual Labourers (grant of temporary status and regularisation) Scheme. With these observations, the petition is disposed of. There will be no order as to costs.


Member (J)

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Member (A)