

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 21st day of November 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. A.K. BHATNAGAR, J.M.

O. A. No. 1331 of 1995

Gajendra Singh Bisht S/O Sri Prem Singh Bisht, aged about 26 years R/O 117/473, Pandu Nagar, Kanpur..... Applicant.

Counsel for applicant : Sri O.P. Khare.

Versus

1. Union of India through the Secretary, Central Board of Excise and Customs, AGCR Building, New Delhi.
2. Commissioner, Customs and Central Excise, Sarvodaya Nagar, Kanpur.
3. Rakesh, Casual Labour (Temporary Status) C/O Commissioner, Customs & Central Excise, Sarvodaya Nagar, Kanpur.
4. Kalicharan, Casual Labour (Temporary Status) C/O Commissioner, Customs & Central Excise, Sarvodaya Nagar, Kanpur.
5. Hari Mohan, Casual Labour (new appointment) C/O Commissioner, Customs & Central Excise, Sarvodaya Nagar, Kanpur.
6. Ajai Kumar, Casual Labour (New appointment) C/O Commissioner, Customs & Central Excise, Sarvodaya Nagar, Kanpur.
7. Dhani Ram, Casual Labour (New appointment) C/O Commissioner, Customs & Central Excise, Sarvodaya Nagar, Kanpur.

..... Respondents.

Counsel for respondents : Sri D.S. Shukla.

ORDER

BY HON. MR. S. DAYAL, A.M.

This application has been filed for a direction to the respondent No.2 to consider the appointment of applicant as casual labour and place him above his juniors on the basis of notional seniority. A direction is also sought to modify the list as prepared by Respondent No.2 on 23.9.94 and include the name of the applicant for grant of temporary status as he was on roll on 10.9.1993.

2. The applicant has claimed that he was engaged as casual labour in 1983, 1984 and 1985 and his services were terminated on completion of work of 30.6.83, 30.6.84 and 29.7.85 respectively. He was employed in subsequent years and had worked from October 1992 to September 1993 for 335 days. He claims that he was not given work from 1.10.93 onwards although his juniors continued to work. He has claimed that Sri Manoj Kumar, Sri Lal Bahadur, Sri Ram Sukh, Sri Rajesh Kukvati and Sri Rajesh Srivastava, who were junior to the applicant in length of service were engaged after his oral disengagement and are shown as working in 1993 in the wage bill for the period. He claims to have approached the respondents after disengagement from time to time but was not given work and had received only assurances. Subsequently he came to know about the O.M. dated 10.9.93 and the judgment of the Principal Bench in Raj Kamal Vs. Union of India & others dated 16.2.93. He claims that his case was covered by O.M. dated 10.9.93. He has also stated that persons junior to him were included in the list of casual labours who were granted temporary status vide order dated 25.3.94. He has named six casual labours - Lal Singh, Manoj Kumar, Mangali Prasad, Ram Das, Dileep Kumar and Jai Singh in this context. The applicant has also claimed that the Respondent No.2 recruited Respondent Nos.5, 6 & 7 as casual labours as can be seen from Wage Bill of Aug.1995. The applicant has also claimed that Respondent No.2 has illegally granted temporary status to Respondent Nos. 3 and 4 who were junior to the applicant. It is claimed that the applicant represented on 15.4.93, 18.7.94, 4.5.95 and 20.8.95 but the representations remained pending with the respondents.

3. We have heard the arguments of Sri O.P. Khare for applicant and Sri D.S. Shukla for respondents.

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4. We find from the counter reply that the respondents have not denied the work claimed to have been done by the applicant in the year 1992-93. They have also not denied the five persons named in Para 4-C, who are alleged to have been engaged after the applicant was orally disengaged. The respondents have mentioned that Sri Kali Das and Sri Rakesh were not included in the list of casual labours who were granted temporary status w.e.f. 1.3.94. The respondents have also not specifically denied the claim of the applicant that Respondent Nos. 5, 6 & 7 were recruited as casual labours after the applicant was orally terminated. The grant of temporary status to Respondent No. 3 & 4 claimed by the applicant in Para 4-K has also not been denied by the respondents. The respondents have denied that the applicant worked after 10.9.93.

5. The office memorandum dated 10.9.93 entitles a casual labour who is in employment on the date of issuance of the O.M. and had rendered a continuous service of at least one year i.e. engagement for a period of 240 days in case of six days week and 206 days in case of five days week. It is clear from perusal of O.M. dated 10.9.93 that the applicant, who would have been covered under the O.M. has not been considered for temporary status at any time after issuance of O.M.

6. We find that the applicant had represented on 15.4.94 that those casual workers, who had completed 206 days and were in employment on 10.9.93 had been given temporary status vide letter of respondents dated 10.9.94. The applicant has given his period of work in the said application totalling 335 days during 1992-93. The respondents have not denied the receipt of the representation but have stated that the applicant had not completed one year service and he had not been sponsored by the employment exchange. The applicant made another representation dated 20.8.95, the receipt of which is also not denied. The applicant, in this representation, had again stated that he had put in 206 days of work during 1992-93 and

should have been given temporary status. He also ~~presses~~ the issues of termination being bad in law and similarly placed persons having been granted temporary status. The applicant also claims to have sent representation dated 18.7.94 and 4.5.95 which have also not been denied by the respondents.

7. The counsel for respondents has raised the issue of limitation in so much as services of the applicant were terminated on 13.9.93 and the O.A. was filed on 18.12.95. Counsel for applicant states that the cause of action arose after the order dated 25.3.94 granting temporary status to 40 casual labours, many of whom were junior to the applicant, was issued. The applicant made a representation regarding consideration of his case on 15.4.94 and pursued the matter with the respondents by representations dated 18.7.94, 4.5.95 and 20.8.95 and filed the O.A. when his representation was not decided. It is true that the applicant filed this O.A. after passage of more than one year of period within which he should have filed it ^{and} six months from April 94 would mean that the applicant should have filed the O.A. by October 1994. However, considering the fact that the applicant was ^a mere casual labour, who was pursuing his case with the respondents, we are of the view that the delay requires to be condoned and the case be considered on merits.

8. With regard to the allegation of the respondents that the applicant was not sponsored by employment exchange, the applicant has mentioned in his rejoinder that neither he nor any of the 40 casual labours granted temporary status, had been sponsored by Employment Exchange. Therefore, the sponsorship by Employment Exchange does not apply to his case. We find from Annexure-10 of Counter reply that the Department of Personnel and Public Grievances had clarified by memo dated 12th July 1994 that only those casual employees were to be granted temporary status, who had been sponsored by the Employment Exchange. Since the allegation of the applicant is that others, who were similarly situated, had been granted temporary

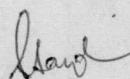
status despite the fact that they ^{were not} sponsored by the Employment Exchange, the applicant also deserves to be considered in the same light.

9. We find that the respondents were asked to produce three bills detailed in MA No.3026/97 by order dated 8.9.97. The respondents have mentioned in their affidavit filed on 10.5.02 that the record was not traceable.

10. We consider that the applicant should be granted similar treatment as was given to the casual labours included in those granted temporary status by order dated 25.3.94 (Annexure A-2) if the applicant as well as the said 40 casual labours included in the list had not been sponsored by the Employment Exchange. The respondents may pass orders after considering this fact from their record and in case no record is available, the averment of the applicant shall be considered as true and the applicant should be re-engaged and granted temporary status without any payment of wages for the period not worked. The respondents shall pass an order after considering the records within four months from the date of receipt of a copy of this order.

There shall be no order as to costs.


J.M.


A.M.

Asthana/