

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 234 of 1999

this the 10th day of March 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Roxy Jaiswal, aged about 20 years, s/o Sri Jagdish Prasad Jaiswal, R/o Ganesh Ganj, Near Hotel Shakti Sosai Ram Ka Chouraha, District Mirzapur.

Applicant.

By Advocate : Sri Rakesh Verma.

Versus.

1. Union of India through the Secretary, Ministry of Finance, Central Excise & Customs, New Delhi.
2. The Dy. Commissioner, Central Excise & Customs, 38 M.G. Marg, Allahabad.
3. The Asstt. Commissioner, Central Excise & Customs, Mirzapur.

Respondents.

By Advocate : KM. S. Srivastava.

O R D E R (ORAL)

By this O.A., applicant has sought the following relief(s):

"(i) To issue a writ, order or direction in the nature of mandamus directing the respondent no.2 & 3 to treat the petitioner as on duty declaring the termination as illegal & void and to pay him wages as per the rules.

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondent nos. 2 & 3 to grant the petitioner temporary status.

OR

(iii) To issue a writ, order or direction in the nature of mandamus directing the respondents to treat the petitioner to have attained temporary status after having 206 days service from 1.1.1998 to 31.12.1998.

(iv) To issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to pay the petitioner wages @ minimum in the pay-scale of Group 'D' servant plus DA, HRA and CCA as per the provisions of the circular dated 1.9.1993.

(v) -----
(vi) -----."

2. It is submitted by the applicant that he was initially engaged as Mali on daily wages on 18.6. 1997 (page 24). Thereafter, he continued to perform his duties and had completed 391 days from 18.6.1997 to 31.12.1998, therefore, he was entitled to get the benefit of the Scheme prepared by the Government of India on 10.9.1993 (page 53). Therefore, the applicant was entitled to be given the temporary status and further regularised as per this Scheme. It is submitted by the applicant's counsel that the Scheme does not talk any-where about the cut off date and since it is continuous cause of action, he is entitled to get the benefit of the said Scheme. In this context, he has relied on 1999 (1) ATJ 415 and 1999 (3) ATJ 505. He has further submitted that his services were terminated illegally arbitrarily after he approached this Tribunal on 26.2.1999, therefore, termination order is illegal and the same is liable to be quashed and set-aside. It is also submitted by the applicant's counsel that the Scheme was framed pursuant to the directions given by this Tribunal in the case of Raj Kamal and in that case there was no mention about the cut off date and the direction was to issue a Scheme to regularise all those persons, who had completed 240 days in a year. Thus, the applicant may be given the benefit arising out of the said Scheme.

3. The respondents have, on the other hand, opposed the O.A. and have submitted that the applicant was engaged as daily wager for performing the work of casual nature and he had not been working continuously, therefore, he is not entitled to get any benefit under the Scheme dated 10.9.1993 as it was only a one time measure and is not applicable in the present case as the applicant was not even on the roll in the year 1993. They have further submitted that the applicant had not put in 206 days in any financial year and

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he was not engaged after December '98. They have, thus, submitted that the O.A. is devoid of merits and the applicant is not entitled to any benefit under the Scheme and the O.A. is liable to be dismissed with costs. In support of their case, they have relied on 2002 SCC (L&S) 577 judgment given in the case of Union of India & Another Vs. Mohal Pal & ors. They have also relied on two more judgments given by this Tribunal on 12.7.2001 in O.A. No. 500 of 1994 and in O.A. no. 1454 of 1998 decided on 30.1.2003.

4. I have heard both the counsel and perused the pleadings as well.

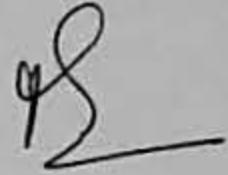
5. Admittedly, the applicant was first engaged on 18.6.1997 which clearly shows that he was not on roll as on 1.9.1993. In this connection, it would be relevant to quote the observations of the Hon'ble Supreme Court in the case of Mohal Pal (supra) wherein it was held as under :

"Clause 4 of the Scheme is very clear that the conferment of 'temporary status is to be given to casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to temporary status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire temporary status the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of atleast one year which means that he should have been engaged for a period of atleast 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be as general guidelines to be applied for the purpose of giving temporary status to all the casual labourers as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given temporary status and later they are to be absorbed in Group 'D' posts."

6. The exact question that came to be decided before the Hon'ble Supreme Court was whether the temporary status would be conferred all casual labourers who are on employment on the date of issue of this O.M. or it could be given to those who were engaged subsequent as well. Since the point

in issue had already been decided conclusively by the Hon'ble Supreme Court, there is nothing more ^{that} ~~remains~~ to be adjudicated in the present case. Since the applicant does not fulfil the condition laid down in para 4 of the Scheme, therefore, ~~he~~ cannot be said to be entitled to any benefit arising-out of the said Scheme.

7. In view of the above discussions, since this case is fully covered by the judgment given by the Hon'ble Supreme Court, this O.A. is found devoid of merits and is dismissed with no order as to costs.


MEMBER (J)

GIRISH/-