

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.730 OF 2002

ALLAHABAD THIS THE 7TH DAY OF MAY, 2004

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN

HON'BLE MR. D. R. TIWARI, MEMBER-A

Yatendra Singh,
S/o Late Ram Singh,
R/o 159-A, Loco Colony,
Aligarh.Applicant

(By Advocate Shri A. Tripathi)

Versus

1. Union of India,
through the Secretary,
Department of Posts,
Ministry of Communication, Dak Bhawan,
Sansad Marg, New Delhi.

2. Chief Post Master General,
U.P. Circle, Hazratganj, Lucknow.

3. Postmaster General,
Agra Region, Agra.

4. Senior Superintendent of Post Offices,
Aligarh Division, Aligarh.

5. Chief Medical Officer Incharge,
P&T Dispensary, Aligarh.

.....Respondents

(By Advocate Shri R.C. Joshi)

ORDER

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN

This O.A. has been instituted seeking the following reliefs:-

"i) to issue an order, rule or direction for quashing and setting aside the impugned order

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dated 10.5.2002 by which the respondent no.5 rejected the claim of the applicant for regularisation on the said post of Nursing Orderly.

ii)to issue an order, rule or direction for quashing and setting aside the show cause notice dated 21.5.2002 issued by the respondent no.5 for terminating the services of the applicant from the said post of Nursing Orderly.

iii)to issue an order, rule or direction for quashing and setting aside the order dated 5.6.2002 passed by the respondent no.3 by which the respondent no.3 directed the respondent no.5 to terminate the services of the applicant.

iv)to issue an aored, rule or direction for quashing and setting aside the impugned termination order dated 12.6.2002 passed by respondent no.5 terminated the services of the applicant from the said post of Nursing Orderly on which post the applicant is continuously working since last 13 years.

v)to issue an order, rule or direction in the nature of mandamus directing the respondent no.5 to grant the temporary status to the applicant and also regularising his service as Nursing Orderly Group 'D'.

vi)to issue an order, rule or direction in the nature of mandamus directing the respondents to give all the consequential benefits for regularisation to the applicant as provided under the rules.

vii)to issue any other order, rule or direction as this court may deem fit and proper under the circumstances of the case.

viii)to award the costs to the application to the applicant."

2. It would appear from the facts of the case that the applicant was engaged as an outsider Nursing Orderly in P&T Dispensary Aligarh, initially in the leave arrangement of ~~late~~ permanent^x incumbent for casual work of Nursing Orderly as and when it was required. The permanent incumbent Shri Tara Singh expired on 17.01.1997 and the applicant continued to work as Nursing Orderly in a para Medical post as and when required as outsider Nursing Orderly.

3. The applicant filed O.A. No.1247/99 Yatindra Singh Vs U.O.I. and Ors. for issuance of a direction to respondents to regularise him in service of Nursing

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orderly. Certain orders terminating the services of the applicant were also sought to be set aside in the said O.A. The Tribunal vide its order dated 22.11.2000 set aside the orders impugned therein, leaving it open to the respondents to pass fresh orders in accordance with law. The applicant was directed to be re-engaged on the post subject to the rider that he would not be entitled for the backwages except for the days he had worked on the post. The respondents were further directed to consider the case of the applicant for regularisation on the post. Following the said order passed by the Tribunal the Chief Medical Officer, P&T, Dispensary, Aligarh passed an order dated 12.06.2002 (Annexure A-4) thereby terminating the services of the applicant with immediate effect. Earlier by letter dated 10.5.2002 the applicant was informed that due to current ban imposed on recruitment by Ministry of Finance communication No.7(3)/E.Corr/99 dated 23.10.2000 his representation for regularisation was rejected. However, it appears that by impugned letter dated 21.5.2002 the applicant was afforded an opportunity of making representation in respect of the conclusions arrived at by the Chief Medical Officer P&T Dispensary, Aligarh. The applicant preferred representation whereupon the impugned order dated 12.6.02 was passed.

4. The question that arises for consideration is whether the applicant had any right to the post and whether he was entitled to continue or otherwise entitled to be regularised on the post of Nursing orderly. As stated supra the applicant was engaged initially against leave vacancy but continued even after the vacancy became a substantive one, but being an outsider Nursing orderly he worked as and when required.

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5. Shri A. Tripathi, learned counsel for the applicant has placed reliance on a scheme framed by Director (Staff) o/o Director General, Department of Posts, New Delhi, in respect of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. The said scheme was framed in compliance with the direction of the Hon'ble Supreme Court. In para 1 of the scheme defines Temporary Status as under:-

'Temporary Status' would be conferred on the casual labourer in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year; During the year they must have been engaged for a period of 240 days (206 days in case of offices observing five days weeks)."

The scheme further provides vide paragraph 7 that conferment of Temporary Status does not automatically imply that the casual labourer would be appointed as regular Group 'D' employee within any fixed time frame. It has been made clear that appointment to Group 'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees. However, it is provided in para 8 of the scheme that after rendered three years continuous service and after conferment of Temporary Status, the casual labourers would be treated at par with temporary Group 'D' employees for the purpose of contribution of General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same condition as ~~as~~ are applicable to temporary group 'D' employees, provided they furnish two sureties from permanent Govt. Servants of this Department. In paragraph 12 of the scheme it is provided that Casual labourers may be regularised in units other than recruiting units also, subject to availability of vacancies and for the purpose of appointment as a regular group 'D' official, the casual labourers will be

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allowed age relaxation to the extent of service rendered by them as casual labourers. It would thus, appear that in order to confirmation of Temporary Status a casual labour must be in employment "as on 29.11.1989" and he must also "continued to be currently employed and have rendered service of at least one year", and during the year he must have been engaged for a period of 240 days (206 days in the case of offices observing five days week). It is only after confirmation of Temporary Status that Casual Labourer becomes entitled for consideration of appointment of Group 'D' vacancy in accordance with the rules subject to availability of post and age relaxation as provided in the scheme. It would be clear from Experience Certificate (Annexure A-7) filed by the applicant that he had worked only for seven days in November 1989. Although from June 1989 to July 1991 he had worked for a total number of 596 days. Thereafter between March 1992 and July 1995 the applicant had worked for a total number of 707 days and from August 1995 to November 1996 he had rendered service for a total number of 163 working days and subsequent years also he had worked from time to time as would be evident from the certificates filed alongwith the original application, but there is nothing on record to show that he was in employment "as on 29.11.1989" - a condition precedent for confirmation of Temporary Status on a casual labourer under the scheme and since the applicant did not fulfill the requirement of confirmation of Temporary Status the question of regularisation of his service and his appointment as a regular Group 'D' employee in accordance with the scheme does not arise. Ravindra Kumar and Ors. Vs. U.O.I., 2002(2) ATJ 55; and Bhuri Singh and Another Vs. U.O.I. & ors, 2002(1) ATJ 15 do not help the applicant.

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6. Shri A. Tripathi, learned counsel for the applicant however, submitted that the only reason given in the order dated 10.05.2002 for denying regularisation of services of the applicant is that there was a ban imposed on recruitment by the Ministry of Finance, Government of India. Be that as it may, but in view of the above discussion the applicant is not entitled to be regularised under the scheme relied on by learned counsel for the applicant i.e. the Scheme of Grant of Temporary Status and Regularisation referred to herein above.

7. Learned counsel for the applicant however, submitted that the applicant was denied opportunity of employment erroneously on ground of ban. The learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in the case of Krishan Chander Nayer Vs. The Chairman, Central Tractor Organisation and Others Supreme Court Service Rulings Vol 21 page 636 in support of the contention the denial of opportunity of employment on the ground of imposition of ban is unconstitutional. We are of the view that the case of the applicant does not fall under the scheme and he was not entitled for grant of Temporary Status, nor was he entitled to be regularised in terms of the scheme framed by Government of India pursuant to the direction given by the Hon'ble Supreme Court.

8. Learned counsel for the applicant then submitted that termination of services of the applicant was illegal for the reason that order of termination was issued at the behest of a superior authority. He has placed reliance on the judgment of Tilak Dhari Yadav Vs. U.O.I. and Ors. reported in (1997)36 ATC(FB). In the instant case, as pointed out herein above, the applicant was engaged on

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casual basis as an outsider Nursing Orderly on "as and when required" basis and it was decided not to continue him any further. The decision, therefore, has no application to the f cts as stated above.

9. In view of the above discussion, the O.A. fails and is dismissed. We, however, make no order as to costs.

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Member-A

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Vice-Chairman

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