

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1185 of 2002

Dated: This the 24th day of November, 2004

Corum:

Hon'ble Mrs. Meera Chhibber, J.M.  
Hon'ble Mrs. Roli Srivastava, A.M.

Harsh Mani,  
S/o Shri Chandra Mani,  
R/o Kothi No.4, Garden Road,  
Baluganj, Agra.

....Applicant.

( BY Adv. : Shri H.S.Tripathi,  
Shri G.P.Sharma,  
Shri O.P.Sharma)

Versus

1. Union of India through the Director General,  
Archeological, Survey of India, Janpath,  
New Delhi.
2. Superintending Archaeologist,  
Archaeological Survey of India,  
Agra Circle, 22, The Mall, Agra.

....Respondents.

( By Adv. : Shri P.Krishna )

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

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

" (A) To issue writ, order or direction  
in the nature of mandamus to the commanding  
respondent to regularise the appointment of  
the applicant to the post of attendant in  
the office of the Respondent No.2 in the



....pg 2/-

pay scale of Rs.2550-3200 plus allowance admissible since 24.1.2001 i.e. the date on which acceptance of offer received by the respondent No.2.

(B) To issue writ, order or direction in the nature of mandamus to the commanding respondent to pay the arrears of salary and allowances of the respective post since 24.1.2001 for the period to which it may be accrued.

(C) To pass any other order to which this Hon'ble Tribunal may deem fit and proper in the circumstances of the instant case."

2. <sup>basic &</sup> The facts of the case ~~are~~ not really disputed, it is an admitted position that applicant was given offer of appointment for the post of Attendant in the pay scale of Rs.2550-3200 plus allowances in the office of Superintendent, Archaeological Survey of India, Agra Circle. By this office memorandum dated 22.1.2001 it was made clear that if Shri Harsh Mani accepts the offer on the above terms and conditions, he should communicate his acceptance to this office by 31.1.2001. In case no reply is received or the candidate ~~is~~ fails to approach for duty by the prescribed date, the offer will be treated as cancelled (page 22). The applicant gave his acceptance for the post of Attendant immediately thereafter on 24.1.2001 (page 23). Thereafter he was waiting for the letter calling upon him to join the duties, but since no such letter was received by him. He immediately thereafter gave a representation on 05.11.2001, which was received in the office of respondents on 06.11.2001 wherein he informed the department that he has already submitted his acceptance of offer along with his certificates as required and even his police verification has been got

done. Therefore, the appointment letter/posting order may be issued to the applicant at the earliest (page 25). Since no reply was given to him, he gave another reminder on 30.4.02, which was received by the respondents on 01.5.02 (page 26) followed by another letter seeking appointment to the post of Attendant, which was duly received by the respondents on 08.08.2002 (page 27). However, since no reply was given to him, therefore, he had no other option but to file the present O.A..

3. Respondents have not disputed ~~this~~ fact. They have ~~simply~~ stated that some posts of Attendants were lying vacant in the establishment, therefore, as per provision of the scheme for grant of temporary status and regularisation of casual labourers 1993, two out of every three vacancies were to be filled from among the existing T.S. Labourers and rest ~~have to be~~ were to be filled from the open market. Accordingly, due process was initiated to regularise the T.S. Labourers and filling of the rest of the vacancies from the open market. Initiating this process, an advertisement was published in the Employment News dated 27.11.1999 to 03.12.1999, after clearance from the surplus cell. They have further explained that 29 vacant posts of monument attendants were to be filled, ~~up~~ out of which 19 were to be filled from among the existing T.S. Workers and 10 posts were to be filled from open market as per rules on the subject and three posts were to be filled from the reserved category. On the basis of seniority list of T.S. Workers 19 casual labourers were selected to be regularised as monument attendants in the pay scale of Rs.2550-3200 strictly on the basis of the seniority list. They have, thus, explained that the ratio of vacancies to be filled from T.S. Workers and candidates from open market was ~~fixed~~ at 2:1 <sup>Another word is</sup> out of every three vacancies, two could be filled from among the T.S. Workers and

one from the open market as per rules on the subject. Hence, and advertisement was given by the respondents for filling the post of attendant from open market, which was absolutely in accordance with rules as is clear from para 8 of scheme itself. They have admitted that applicant was given the offer of appointment and he had given his acceptance also, but they have submitted that in the mean time judgment in O.A.895/1992 was received by them wherein a direction was issued to the respondents not to absorb anyone from out side untill and unless all the T.S.Casual labourers of the department are absorbed as per rule. They have, thus, submitted that it was in view of the judgment given by this Tribunal that the process of employment could not be finalised. They have, however, clarified that petitioner can be given appointment, once the restriction imposed by the Tribunal is withdrawn, for which they have already filed Review Application. They have, thus, prayed that in view of the facts as disclosed above this O.A. may be dismissed.

4. We have heard counsel for the applicant and perused the pleadings as well. We had also called the Review Application No. 07/2001 in O.A. 895/1992.

5. After going through the judgment given in the case of Khubi Ram, it is seen that three O.As. were decided by a common judgment dated 06th September, 2000, the claim of applicants therein was to grant them temporary status and regularisation as they had been working in the organisation since a very long time. The said judgment was, therefore, in the context of Casual Labourers working in the organisation, therefore, this Tribunal had directed the respondents not to make any recruitment from the ou side unless and until those applicants were absorbed as per rules. Now the Rules are laid down in the scheme itself issued by Government of India.



knowing as Casual Labourers (Grant of Temporary status and regularisation scheme, 1993). We are concerned with para 8 of the said scheme, which for ready reference reads as under:-

"i] - Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed a relaxation equivalent to the period for which they have worked continuously as casual labourer."

6. Respondents in their C.A. have clarified that it was in keeping with this para 8 of the scheme that they had filled up 19 posts from among the Casual Labourers on the basis of their seniority and 10 posts were to be filled from open market because as per para 8 of the scheme out of three vacancies <sup>only</sup> ~~over~~ 2 vacancies were required to be filled from among the Casual Labourers holding temporary status. We find no illegality in the actions of the respondents <sup>who</sup> ~~being~~ issued ~~the~~ advertisement for filling ~~the~~ 10 posts of Attendants from the open



market. Admittedly, respondents had completed process by issuing advertisement holding the interview and giving the offer of appointment to the applicant. Applicant had given his acceptance also within the stipulated period. Therefore, all that remained was to give him the letter calling upon him to join the duties. Admittedly, respondents did not issue the letter because they felt that in view of the judgment given by this Court in O.A. 895/1992 they could not resort to open recruitment at all whereas from the perusal of judgment we find that since Tribunal was dealing with Casual Labourers and ~~Casual Labourers would be entitled for regularisation~~ naturally the judgment would be related only to Casual Labourers to the extent of vacancies which would be available to Casual Labourers under the scheme therefore the direction was with regard to those vacancies only which were meant for being filled from amongst the Casual Labourers with temporary status. It is settled by now that in case of any ambiguity the orders are to be read with reference to the context in which the orders have been given by the Court. At this juncture, we would like to refer to the latest judgment of Hon'ble Supreme Court reported in 2004 (7) SCC 219 FBPL Ltd. Vs. R. Sudhakar wherein it has been held as under :-

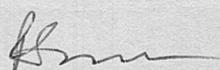
" In case of ambiguity in interim order it should be understood in the light of prayer made for interim relief, facts of the case and terms of interim order! 7 The same principle would apply in the final judgment as well. Applying the above principle it would be clear

that Since the case of Khubi Ram was dealing with the case of casual labourers, naturally there was no occasion for the Court to restrict or restrain respondents from filling up the posts/vacancies meant for direct recruitment to be filled from open market. We are, therefore, satisfied that respondents have misread the judgment given by the Tribunal in the case of Khubi Ram. In fact, respondents pg7/-

have categorically stated in Counter Affidavit that once the embargo is lifted, they shall issue the appointment letter in favour of applicant. It is, therefore, clear that respondents had not issued appointment letter in favour of applicant under a misconception that is why they had even sought clarification from the Court by filing a Review Application. However, in view of the facts and legal position as explained above it is clear that the judgment given by this Tribunal in the case of Khubi Ram and Ors. can not come in the way of applicant in getting his appointment as Attendant.

8. We, therefore, allow this O.A. and direct the respondents to issue appointment letter in favour of applicant as Attendant with effect from the same date when he was initially issued the offer of appointment by giving him benefit of seniority. It is made clear that in the meantime, if applicant has become over age that would be relaxed by the respondents because at the time when he was given the offer of appointment, he was well within his age. It is, however, made clear that applicant would not be entitled for any back wages, as we are informed that during the intervening period, he was made to work as Computer Operator on Casual basis.

9. With the above direction this O.A. is allowed with no order as to costs.



Member-A



Member-J

Brijesh/-