

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

...

O.A.No.48 of 1996

Dt. of Order: 24.4.2002.

Present: Hon'ble Mr. B.P. Singh, Member(A)
Hon'ble Mr. M.L. Chauhan, Member(J)

...

PRADIP KR MAZUMDAR

VS

S.E. RLY

For the Applicant : Mr. B.C. Sinha, Counsel

For the Respondents: Mr. S. Choudhury, Counsel.

...

ORDER

The applicant has filed this application against the action of the respondent authorities whereby he was not permitted to join with further prayer that direction be issued to the respondent authorities to engage the applicant on similar post as was being held by him and he should be awarded temporary status towards regularisation with effect from 26.10.1990 treating the entire period since 2.6.86 as his continuous service.

2. The applicant was engaged as clerk purely on casual basis at a consolidated salary of Rs.300 per month with effect from 2.6.86 until further orders by the Honary Secretary of the Doordarshan Co-op. Canyeen Ltd. (Annexure-A). It is further alleged in the application that the applicant continued to work in that capacity till December, 1989. The further case of the

applicant is that he fell sick in January 1990 and intimation to this effect was given to the Secretary of the Canteen vide letter dated 5.1.90 under certificate of posting, a copy of which has been annexed as Annexure-B. The further case of the applicant is that he recovered from illness only in October, 1990 and he was declared fit to resume duty with effect from 20.10.90 vide medical certificate, copy of which has been annexed as Annexure-D with this application. It is further averred that when on 22.10.90, the applicant went to join duty and produced the said fitness certificate, he was not allowed to join duty by the Manager-cum-Salesman of the canteen on the plea that the post has since been filled up. Thereafter the applicant has allegedly ~~to have~~ made representation to the Director, Doordarshan Kendra Calcutta who is also ex-officio Chairman of the Canteen through a registered letter on 10.11.90, copy of the postal registration receipt is annexed as Annexure-E. It is further alleged that the copy of the said representation is not available with the applicant so, the same could not be annexed with the present OA. The further case of the applicant is that he is entitled for ~~to~~ temporary status and regularisation of his services as clerk pursuant to OM No.19.28/91-S.II dated 25.7.91, issued by the Government of India, Directorate General, Doordarshan, New Delhi and also pursuant to OM dated 29.1.92 enclosed as Annexure-G, issued pursuant to the decision of the Apex Court in the case of

Non-Statutory Departmental/Cooperative Canteen employees located in the Central Government Offices. The applicant has also placed on record copy of the engagement letter dated 19.4.95 (Annexure-I) whereby some person working in Doordarshan canteen as casual workers were awarded temporary status with effect from 1.9.1993 as per terms and conditions mentioned therein. The applicant has also made further representation(A-J) which according to the applicant remain unattended.

3. The respondents have filed reply affidavit wherein it has been stated in the reply that the applicant was engaged as a clerk with effect from 2.6.86 on casual basis at a consolidated salary of Rs.300 per month by the Doordarshan Cooperative Canteen Ltd. and he rendered the service there upto 2.1.90. It has further been submitted that the applicant remained absent from 3.1.90 without any intimation to the Canteen establishment. It is further stated that the respondent authority has not received any so called representation dated 1.11.90 and further that the applicant never came to join duty after recovery of illness although he was declared fit on 20.1.90. It is submitted that under these circumstances, his case for re-engagement in the canteen establishment could not be considered as he remained absent abruptly from duty for about 10 months at a stretch. Regarding the implementation of the

QM dated 25.7.91 (Annexure-F) and the QM issued pursuant to the judgement of Hon'ble Apex Court (Annexure-G) It has been submitted that order for awarding of Temporary Status to casual labourers are available only to those casuals who were on employment for the nature of work of Groyp 'D' staff, on the date of issue of the memo dated 1.9.93 and who had completed the continuous service of one year. Since the applicant has worked as clerk in the Canteen upto 2.10.90 and he himself discontinued his service without intimation to the authority concerned from 3.10.90 and as such ~~he is not~~ entitled for consideration regarding awarding of temporary status to him as per the Scheme of 1993.

4. We have heard the learned counsel for the parties and gone through the record of this case.

5. The main contention of the learned counsel for the applicant is that since he was not permitted to join duty after recovery of his illness and that his case is covered by the office Memo as issued vide Annexures F & G as such he is entitled for temporary status and regularisation with effect from 22.10.90. On the other hand, learned counsel for the respondents submitted that the cause of action, if any, arose in favour of the applicant on 20.10.90 when he was alleged to have been refused to join his duty as clerk and the present application was filed in the year 1996, as such the application is liable to be dismissed on the ground of limitation, in view of

provisions contained under Section 21 of the AT Act, 1985.

It is further contended that as per averment made by the applicant himself, he had made representation on 10.11.90 which according to the applicant remained pending with the respondent authority, the applicant could have filed an application immediately after the expiry of six months as the said representation shall be deemed to have been rejected after the expiry of the aforesaid period of six months in case no decision has been taken by the authorities concerned on the said representation. On merit, it has been contended that as per the Scheme of 1993, those casual workers are to be granted temporary status/regularisation who were working against Group 'D' post and they have to be absorbed in the vacancy arising in Group 'D' post as and when such posts are available. Since the applicant was working against Group 'C' post, he is not entitled to be considered for the purpose of grant of temporary status in Group 'C' posts as well as against Group 'D' posts.

6. We have considered the rival contention made by the learned counsel for the parties. We are of the view that the applicant is not entitled to any relief as claimed by him

It is not disputed that the applicant was initially engaged as

clerk temporarily on casual basis at a consolidated salary of Rs.300 per month with effect from 2.6.86 and the applicant worked in that capacity upto 2.1.90 and it is also not disputed that he remained absent from 3.1.90 till date as is evident from para 16 of the reply affidavit filed by the respondent authorities. Further, the case of the applicant is that he remained ill a with effect from 3.1.90 and he had also submitted an intimation to this effect vide letter dated 5.1.90. According to the applicant, he recovered from illness only on 20.10.90, when he was declared medically fit by the doctor as per certificate appended with the OA as Annexure-D. The applicant has further contended that immediately thereafter he reported for duty but he was refused to join on the ground that person had already been engaged in his place and thereafter he made representation on 10.11.90. This contention of the applicant cannot be accepted for more than one reasons; firstly according to the ~~applicant's~~ respondents, they have not received the so called representation. It has also been specifically averred in the reply affidavit that the applicant never approached the authorities concerned for his re-engagement on 20.10.90 when he was declared fit to resume duty. We see no reason to disagree to this submission of the learned counsel for the respondents. It appears that the applicant has set up his case only after the issuance of OM dated 29.1.92

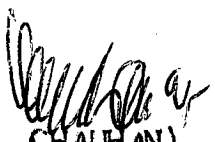
WJ Annexure (G) whereby the government has decided to give benefit

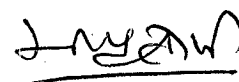
of regularisation to the casual labours of non-statutory department/Cooperative Canteen employees against the available vacancy in Group 'D' posts. If the applicant had some genuine grievance, he could have approached this Tribunal immediately after 20.10.90 and in any case after six months from the filing of the alleged representation dated 10.11.90 if he was not permitted to join his duty against the post which he was holding immediately before proceeding on leave or on similar post. Similarly we are also of the view that the applicant was working against Group 'C' post and the benefit of the scheme as extended vide Annexure F dated 25.7.91 is admissible to Group 'D' posts subject to availability of Group 'D' post. Similarly the benefit of the Scheme dated 1.9.93 is available to those casual labourers of the canteen who were in employment in the establishment on 1.9.93 and has put in at least 240 days in a year as on 1.9.93. Since the applicant was not in a position as on 1.9.93 and his absence was unauthorised as such he is not entitled to the benefit of regularisation in terms of department of Personnel and Training Casual Labours (Grant of Temporary Status & Regularisation) Scheme, 1993.

7. In view of what has been stated above we are of the view that the applicant is not entitled to any relief even on merit. So far the question of limitation is concerned since the present application has been admitted by this Tribunal, as such we are not giving any finding on this score though admittedly this case is hopelessly barred and no application for condonation of delay in terms of sub Rule (3) of Section 21 of the AT Act, 1985

has been filed. Needless to add that the applicant was put to notice regarding delay in filing the present application by the respondents authorities when the reply affidavit was filed by them. But despite that the applicant has not chosen to move any application for condonation of delay.

8. For thereasons stated above, the present application fails and is hereby dismissed. No order as to costs.


(M.L. CHAUHAN)
Member(J)


(B.P. SINGH)
Member(A)

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