I/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 06.10.2000.

O.A. No. 215/1998

Roop Lal S/O Shri Chunni Lal Dangi, R/O Village Kharbadiya, Post, Matoon, Tehsil Girwa, District Udaipur. Class IVth employee in the office of Assistant P.F. Commissioner, Sub Regional office, Sola Tbran Baori, Udaipur (since termination).

... Applicant

Vs

1. Union of India through the Secretary (P.F. Department Ministry of Finance, Government of India, New Delhi.
2. Central Provident Fund Commissioner, HUDCO, Vishala 14, Bhikaji, Kama Palace, New Delhi.
3. Regional Provident Fund Commissioner, Nidhi Bhawan, Vidhyut Marg, Jyoti Nagar, Jaipur.
4. Assistant Provident Fund Commissioner, Sub Reginal Office, 16-Sola Toran Baori, City Station Road, Udaipur.

... Respondents

Mr. M.R. Singhvi, Counsel for the Applicant.
Mr. M.A. Siddique, Adv., Brief holder for Mr. N.M. Lodha, Counsel for the Respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Roop Lal has prayed for a direction to the respondents to regularise the services of the applicant as a Group 'D' employee in the

Contd..2

regular pay scale from the date of his initial appointment with all consequential benefits and further the respondents be restrained from terminating the services of the applicant during the pendency of this O.A.

2. Applicant's case is that he was initially appointed as a Group 'D' employee on daily wages with effect from 08.10.1997. His services were abruptly terminated w.e.f. 01.1.1990. The applicant filed O.A. No.41/1993 before this Tribunal, which was decided on 18.7.1994 with the following observations :

> " We, therefore, quash the verbal termination order of the applicant and direct the respondents to reinstate the applicant, he will not be entitled for any back wages. However, the respondents shall not be precluded from passing any order against the applicant by following the relevant provisions of Section 25-F of the Industrial Disputes Act. As for regularisation etc., the applicant may make representation to the concerned authorities for the same."

In compliance to the orders of the Tribunal (supra) the respondents engaged the applicant only for 20 days vide order dated 21.9.1994 (Annexure A/5). Feeling aggrieved, the applicant filed a Contempt Petition No.89/94. Upon this, the respondents modified their earlier order dated 21.9.1994 and ordered for reinstatement of the applicant vide their order dated 08.12.'94 (Annexure A/6) and , therefore, the Contempt Petition was dismissed. In regard to his regularisation, the applicant has made several representations, but to no avail. The applicant had to file another O.A. bearing No.240/97, which was disposed of vide order dated 8.9.97 with the following observations :

> "In these circumstances, we dispose of this OA, at the stage of admission with a direction to respondent No.3 and 4 to decide the applicant representation, at Annex. A/6, dated 31.12.96 through a detailed speaking order on merits with a period of three months from the date of receipt of a copy of this order. Let a copy of the O.A. and the Annexures thereto be sent to respondents No.3 and 4 alongwith a copy of this order."

Contd.3

The applicant's representation was considered by the respondents vide letter dated 22.12.'97, and rejected on the ground that his name was not initially sponsored through Employment Exchange and for regularisation sponsorship from Employment Exchange is pre-requisite. Accordingly, his services were terminated vide letter dated 22.12. 1997 (Annex. A/2). This letter dated 22.12.'97 terminating the services of the applicant was, however, cancelled vide respondents' letter dated 26.12.97 (Annexure A/3) and the applicant was taken back as casual labour on daily wages. Contention of the applicant is that while he was appointed as casual labour in the year 1987, he was registered with the Employment Exchange, but he was never asked by the respondents to get himself sponsored from the Employment Exchange. He has put in more than 11 years of service since then and his case for regularisation cannot be rejected now on the ground that his name was not initially sponsored by the Employment Exchange. Hence, this application.

3. Notices were issued to the respondents and they have filed their reply. It has been submitted by the respondents that while engaging the applicant initially in the year 1987, the prescribed procedure for appointment was not followed and as a matter of fact, the applicant's candidature should have been sponsored by the Employment Exchange.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. The case of the applicant for regularisation as a Group 'D' employee has been denied by the respondents only on the grounds that his name was not initially sponsored by the Employment Exchange. It has also been held by the respondents that sponsorship by the Employment Exchange is pre-requisite for regularisation. In this connection, our atten-

Contd..4

-tion is drawn to judgment of Hon'ble the Supreme Court in 1996 SCC (L&S)1420 -Excise Superintendent Malkapatnam Krishna District, A.P. Vs K.B.N. Visweshwara Rao & Ors., wherein it has been held that restricting the selection only to the candidates sponsored by Employment Exchange is not proper. We consider it appropriate to extract below the relevant portion of the above cited judgment :

> "Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted , fair play would be subserved. The quality of opportunity in the matter of employment would be available to all eligible candidates."

6. The applicant has already put in about 13 years of service on casual basis with the respondents, and in the light of above judgment of Hon'ble the Supreme Court, the applicant cannot be asked to get sponsorship from the Employment Exchange at this stage. As has been held by Hon'ble the Supreme Court above restricting the selection only to the candidates sponsored by the Employment Exchange is not proper.

7. In the light of above discussion, we find that the application has merit and deserves to be allowed.

Contd..5

I/15

8. The Original Application is accordingly allowed with a direction to the respondents to consider the case of the applicant for regularisation on a Group 'D' post within a period of three months from the date of receipt of a copy of this order. Parties are left to bear their own costs.

(GOPAL SINGH)
Adm. Member

(B.S. RAIKOTE)
Vice Chairman

J

Recd. Copy for
Shri M.R. Singhi
16/10
(VINAY JAIN)
ADV.

Part II and III destroyed
in my presence on 11.2.07
under the supervision of
section officer (J) as per
order dated 20/11/07

Section officer (Judicial)