

Central Administrative Tribunal, Jodhpur Bench,
Jodhpur

Date of Order : 19/6/2001

1. O.A.NO. 329/1998

2. M.A.NO. 200/1998
(In OA 329/98)

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Anil Kumar Jat S/o Shri Jagpal Singh last working as Part Time Typist, Reservation Booking Office, Northern Railway, Sriganganagar, R/o Anil Kumar Jat C/o Umed Pal Singh Sethia Farm Main Road 14 Hardeep Singh Colony, Sriganganagar.

..... Applicant.

Vs.

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Bikaner (Rajasthan).

3. Senior Divisional Personnel Officer, Northern Railway, Bikaner (Rajasthan).

..... Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. Bharat Singh, Counsel for the applicant.

Mr. S.S.Vyas, Counsel for the respondents.

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Per Mr.A.K.Misra, Judicial Member :

The applicant had filed this O.A. with the prayer that the order dated 30/31.10.96 (Annex.A/1), be

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quashed and the respondents be directed to consider the case of the applicant treating him as Casual Typist for the purpose of appointment and regularisation of the services on the post of Typist/Clerk and appoint and regularise the applicant on the said post as has been done in respect of other similarly situated candidates.

2. Along with the O.A. the applicant had filed a M.A. for condonation of delay stating therein that the time taken in contesting the C.P. against the respondents be condoned as the applicant on the basis of legal advise had filed a C.P. against the impugned order Annex.A/1, as mentioned in the O.A.



3. Notice of both the applications was given to the respondents who have filed their reply. It is stated by the respondents that the applicant was engaged to type reservation charts purely on contract basis at the rate of 5 paisa per line. As such his term of engagement was not as a casual labour typist, therefore, he is not entitled to be regularised. The case for regularisation of the applicant was considered in terms of the earlier order passed in O.A. No. 329/93 rendered on 26.9.95. It is also alleged by the respondents that the post of Typist/Clerk is a selection post and as per the rules for recruitment the selection is to be made through the Railway Recruitment Board. On the contrary, the applicant was engaged purely on job basis i.e. 5 paisa per line of the reservation chart, therefore, the scheme for regularisation does not help the applicant. The O.A. deserves to be dismissed. It is also stated by the res-

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pondents that the O.A. of the applicant is hopelessly time barred. The applicant has challenged the order dated 30/31.10.96 through this O.A. moved in the year 1998 which is not permissible under the law. The period spent by the applicant in prosecuting the C.P. cannot be ignored by condoning the delay, therefore, the application moved by the applicant for condonation of delay also deserves to be dismissed.

4. The applicant had filed a detailed argumentative rejoinder mentioning therein the rules propounded by various courts from time to time. It is submitted by the applicant that engaging a person on purely on contract basis is an un-fair labour practice. The un-employed youth has no alternative except to agree with the conditions for seeking employment, therefore, such disadvantageous conditions cannot be allowed to help the employer-respondents. The applicant reiterated the prayer of reengagement.

5. We have heard the learned counsel for the parties and have gone through the case file.

6. Both the learned counsel for the parties advanced their arguments on the lines of their pleadings which we have duly considered.

7. There is no dispute in respect of the fact that the applicant was engaged on contract basis for typing-out reservation charts at the rate of 5 paisa per line. He was neither a daily wager nor a casual labour typist.

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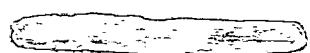
8. Keeping these facts in view, it was argued by the learned counsel for the applicant that the services of the applicant were unfairly terminated in the year 1995. The applicant rendered service to the respondents on contract basis for almost five years and, therefore, he is entitled to be regularised. He has also taken support of earlier judgements rendered by this Bench. On the other hand, the learned counsel for the respondents has argued that the persons appointed ~~as~~ casual labourers are only entitled to be regularised as per the scheme of regularisation. The post of a typist/clerk is a Group 'C' post and persons can be engaged on such a post only as per the recruitment rules. Utilising services of any person on the Group 'C' post does not confer any right for regularisation. The contract on the basis of which the applicant was working could be terminated at any stage which has been done in the instant case. Therefore, the applicant, herein, is not entitled to any relief.

9. We have anxiously considered the matter. In our opinion, the applicant who was a fixed rated contract typist cannot claim regularisation on ~~such~~ post which is a selection post and appointment on such a post can only be made as per rules. Long working either as a temporary arrangement or otherwise, does not confer any right on the applicant for claiming regularisation. The rulings of which the applicant is taking support are distinguishable on facts. In Aslam Khan's case rendered in OA No. 57/96 dated 30.10.2000 by the Full Bench, it was held that 'a person directly engaged on Group 'C' post (promotional

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post) on casual basis and has been subsequently granted temporary status would not be entitled to be regularised on a Group 'C' post directly but would be liable to be regularised in the feeder cadre in Group 'D' post only'. Though, the aforesaid rule was propounded in the context of the facts that the persons who were initially engaged on a Group 'D' post and having worked for number of years on a Group 'C' post, they claimed regularisation on a Group 'C' post. Their prayer was negatived by observing the aforesaid pronouncement. The case of the applicant in hand is on weaker footings. The applicant was not even a casual labour, he was only a piece rated contract labour and he was to be paid 5 paisa per line on the basis of total number of lines typed. He was also not engaged as a daily rated labour on the basis of minimum wage, therefore, he was not in the category of a casual labour who could claim grant of temporary status after lapse of a statutory period. The cases which have been relied upon by the applicant in this respect are factually different. In those cases the applicants were continued on the post on the basis of directions issued by the Tribunal and they were not dis-engaged. In the instant case, the applicant was dis-engaged in the year 1995 and he filed an O.A. against his dis-engagement wherein the respondents were directed to consider the case of the applicant for regularisation. The respondents found the applicant not entitled for regularisation as per the order Annex. A/1. We do not find any fault in the impugned order Annex.A/1. At the cost of repetition, it may be mentioned that the case in hand is absolutely different than the case of casual labours and there was no question of grant of any temporary status to the applicant as per the terms of

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his engagement. Even casual labours who were granted temporary status, were not found entitled for regularisation in spite of working for number of years solely on the ground that such appointments could only be made according to the recruitment rules. In such circumstances even in the present case if the applicant is ordered to be regularised, that regularisation would be de hors the rules.

10. Looking to the case from another angle, we find that there was no master and servant relationship between the two i.e. the applicant and the respondents. He was engaged on contract basis which could be terminated by either of the parties at any time. There ~~were~~ ^{were} no compelling features for continuance of contract in such circumstances. Ordinarily on termination of a contract prematurely the affected party can claim compensation for premature termination but in the present case even this situation is not available. The applicant was engaged only for typing reservation charts on per line basis and, therefore, even remotely the applicant could not claim to be engaged for a particular period on such terms. Therefore, disengagement of the applicant by the respondents does not confer on the applicant any right to claim relief as mentioned in the O.A.

11. We have also examined the case on the point of delay in filing the O.A. By the earlier order passed in OA No. 329/93 on 26.9.95, the respondents were directed to consider the case of the applicant for regularisation

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on the post of Typist/Clerk as per rules. Therefore, if by the impugned order Annex.A/1 the applicant was informed that he has been considered for such appointment and ~~has~~ not been found eligible for regularisation then the remedy available to him was to challenge the impugned order in the year 1996 or within one year from the date of order, whereas, it appears that the applicant in order to pressurise the respondents had filed a Contempt Petition which ~~was~~ dismissed with the observation that the order of the Tribunal has been complied with by the respondents and no case for contempt is made out. In the circumstances, prosecuting the Contempt Petition by the applicant cannot be termed as a bonafide action for purposes of condonation of delay in moving the present application. In our opinion, there are no sufficient grounds to condone the delay in moving the present application.

12. In view of the above discussions, we are of the opinion that the O.A. of the applicant is badly affected by delay and also ~~as~~ ^{has no} merit. The O.A. and the M.A. deserve to be dismissed.

13. The O.A. and the M.A. is accordingly dismissed with no order as to costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

19/4/2011
(A.K.MISRA)
Jud1.Member

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Part II and IV destroyed
in my presence on 27/3/07
under the supervision of
section officer as per
order dated 19/2/07

Section officer (Signature)