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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 316/2001.

Date of decision: 26.10.2004.

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Hon'ble Mr. G.R.Patwardhan, Administrative Member.

Fakhruddin S/o Shri Saduli Khan, aged about 58 years, resident of Mohalla Kuchi Para, Near Kayamkhani Ki Masjid, Bikaner (Raj) at present employed on the post of Casual Labour (T.S) in the office of National Research Centre, on Camel Jorebere P.B No. 7, Bikaner (Rajasthan)

: Applicant.

Rep. By Mr. B. Khan : Counsel for the applicant.

VERSUS



1. Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi.
2. The Director, National Research Centre of Camel, Jorber Breed, Shiv Bari, Bikaner (Rajasthan)
3. The Secretary, Government of India Ministry of Finance, New Delhi.

: Respondents.

Mr. S.N. Trivedi

: Counsel for respondents 1 & 2

ORDER (ORAL)

Per Mr. Kuldip Singh, Vice Chairman.

This is the second round of litigation, whereby the applicant is seeking regularisation in Group D post under the respondents since he is working with them from 1989 as Casual Worker with temporary status.

2. It seems that the respondents had issued a requisition dated 04.04.89 to the employment exchange to sponsor suitable candidates for the post of Casual Worker purely on daily wages basis. The applicant, who was discharged from Army registered his name with the employment exchange, was sponsored in response to the said requisition. He was duly selected and appointed vide order dated 28.05.89 and he joined the post on 01.12.89. He was also conferred with temporary status with effect from 01.09.93. The applicant having not been regularised filed O.A. No. 263/96, seeking a direction to the respondents to regularise his services in Group D post from the date of his initial appointment and to further consider his case for Group C post against ex-serviceman quota. The said O.A was allowed by this Bench of the Tribunal vide its order dated 13.10.98 and the following directions were given:



" 8. The O.A is accordingly allowed with a direction to the official respondents to consider appointment of the applicant on a group D post on regular basis right from the date he joined the services under them within a period of three months from the date of issue of this order and also consider him for further promotion as per rules regarding reservation for Ex serviceman and as per his eligibility."

Despite the above direction the applicant was not regularised. The respondents filed DB C.W No. 97/99 before the Hon'ble High Court of Rajasthan. The Hon'ble High Court had upheld the orders of this Tribunal vide its judgement dated 14.01.99. In spite of that the respondents did not choose to implement the orders of this Tribunal dated 13.10.98. Hence the applicant filed Contempt Petition No.21/99. It appears that while the contempt

petition is pending, the respondents had passed the impugned order Annex. A/1 dated 30.12.2000 wherein the department had taken the stand that keeping in view the directions of this Tribunal, that the case of the applicant has been considered and not found suitable for regularisation in Group D post (Supporting Grade -I) as well as for further promotion on the basis of seniority position amongst the Casual Workers with temporary status as his name stood at No. 11 and the reservation benefit of ex-service man can be given only at the time of first civil employment in the light of the rules for reservation for ex-serviceman. When this order was brought to the notice of the Tribunal, the Tribunal dismissed the contempt petition and the applicant was given liberty to challenge the order dated 30.12.2000 by a separate O.A and hence the present O.A.



3. The applicant alleges that his case is a fit case for regularisation since when once he was given employment, he found be suitable for appointment and now it cannot be said that his case has been considered and not found suitable for regularisation. Therefore he contended that the impugned order is ex facie illegal and is contrary to the rules. It is further stated that he is an ex serviceman and he was appointed against the post meant for ex serviceman and therefore his case is different from the case of others since others are belonging to general category. It is further alleged that the respondents have side

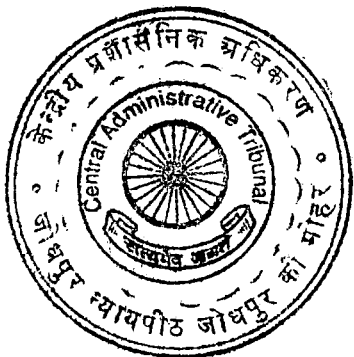
tracked the order of this Tribunal passed in the earlier O.A filed by him. Thus he is fully entitled for the reliefs claimed by him in the earlier O.A. It is therefore prayed that the respondents be directed to regularise the applicant in Group D post and also consider him for promotion to LDC against ex-serviceman quota.

4. The respondents are contesting the O.A. The facts as alleged by the applicant are not admitted. The respondents have stated that the applicant having been conferred with temporary status is eligible for dearness allowance, house rent allowance, periodical increments, leave entitlement etc at par with Group D employees. It is further stated that the claim for regularisation in Group D against ex service man quota is not justified since his name stands at Sl. No. 11 in the inter se seniority of other casual labourers with temporary status and his case cannot be treated differently from the other cases. It is further stated that once an Ex serviceman is appointed to civil post meant for the ex serviceman, he ceases to be an ex serviceman and he is not entitled to the benefit of reservation meant for the ex serviceman for further posts subsequently. It is further stated that there were 22 casual workers with temporary status in the respondents organisation and these posts are to be regularised at the earliest for which the Indian Council of Agricultural Research New Delhi issued a direction to the effect that if in a particular institution there are vacant posts



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of Supporting Staff in SSG -I and there are no sufficient casual labourers with temporary status, those vacancies can be filled from amongst the casual labourers with temporary status from other ICR Regional Station located at the place. Thus in pursuance to the said direction, the Central Sheep and Wool Research Institution situated in Rajasthan demanded casual workers for their regularisation against supporting staff posts. Therefore the respondents had issued a notification to the effect that applications were invited upto 10.06.99 for such posts. The applicant did not apply at that time, whereas persons junior to the applicant had applied and had in fact been regularised in other institution. As regards the earlier O.A. it is submitted that this Tribunal had directed the respondents to consider appointment of the applicant on Group D posts on regular basis. Since it had directed the respondents only to consider the case of the applicant for regularisation it was considered and it was found not suitable to regularise him and the respondents had passed a reasoned order stating that the applicant was not entitled to be considered under Ex-serviceman quota and hence the impugned order has been passed. It is further stated that since vacancies were not available the case was also referred to the Finance Ministry and the financial sanction from the said Ministry is still awaited. It is also averred that as and when the financial sanction is received the case of the applicant would be



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considered. Thus the respondents have prayed for the dismissal of the OA.

5. We have heard the learned counsel for the parties and perused the records. After receipt of the reply, the learned counsel for applicant filed M.A for impleading the Ministry of Finance as a party respondent and notice was issued. Thereafter, reply was filed on behalf of the Finance Ministry. It is stated that the matter of casual workers with temporary status is still pending and regularisation would be done as and when the financial sanction is received. On a perusal of the same, it appears that the respondents are willing to regularise the services of the applicant and that is why they referred the matter to the Finance Ministry. However, the Ministry of Finance is taking its own time to accord financial sanction for the same. However, from the documents available on record it appears that the applicant's case has not been taken in right perspective. In this regard we may mention that this Tribunal in its order dated 15.09.2000 in C.P. No. 21/99 filed by the applicant had observed as under:



"..... It appears that because of this clubbing of various posts, financial implications have increased and consequently matter of sanction is taking its own time. The learned counsel for the respondents is therefore directed to get the issue of one post related to the applicant separated from other matters for purposes of financial sanction. "

But despite these directions, the case of the applicant has not been taken separately. From the records we also find that the department vide there office memorandum dated 22/26.04.99

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had taken a stand that the applicant was given the benefit of Ex Army man at the time of appointment and he is entitled to that benefit only once and after his joining the civil post he cannot claim the benefit of reservation meant for ex serviceman. For this purpose they relied on Swamy's Handbook of Reservations and Concessions in appointments Chapter 6 (Reservations for Ex servicemen) para 5 (page 50 of the paper book), wherein it is mentioned that once an ex serviceman is appointed to a civil post against a reserved vacancy he ceases to be an ex service man and hence not entitled to the benefit of reservation for other posts subsequently. In our considered view that this stand of the respondents is erroneous, since the applicant was appointed only as a casual labour that is not an appointment to 'civil post'. Grant of temporary status under a scheme promulgated by the DOPT or on any other analogous scheme also does not mean that the applicant had been appointed to a 'civil post'. Hence no regular appointment was given to the applicant on the basis of reservation meant for ex-serviceman. Further this Tribunal vide its order dated 15.09.2000 in the contempt petition, directed the respondents to consider the case of the applicant separately and the same is also not done by the respondents. Hence this O.A has to be allowed with a direction to the respondents to reconsider the case of the applicant and his case should be considered separately and he should also be given the benefit of reservation meant for ex serviceman, if any,



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for the purpose of recruitment to Group D post which is the lowest grade in hierarchy of Government service.



6. The O.A is disposed of with the above directions. The respondents are directed to consider the case of the applicant for appointment on regular basis in Group D posts within a period of two months from today and no further time would be granted on any account. No costs.

(G.R. Patwardhan)
Administrative Member.

(Kuldip Singh)
Vice Chairman.

Jsv.

Received cargo order

Mr. Hilary
(Sharad Sush)
Adv.
for S.N. Tripathi

R/C copy

on 29/11
Sush