

(5184)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur**

Original Application No. 191/2006

Date of decision: 22.08.2008

Hon'ble Mr. Tarsem Lal, Administrative Member.

Ganshyam Panwar, S/o shri Gebi Ram Ji, aged about 33 years, by caste Meghwali, resident of village Shri Ramsar, Post Office Sujandesar, Bikaner (Raj) posted as Class IV employee in the office of Assistant Director of Income Tax (Investigation), Bikaner, (Rajasthan).

:Applicant.

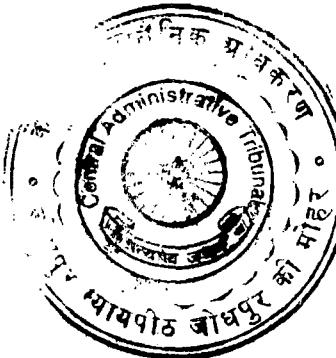
Rep. By Mr. Hemant Shrimali and

Mr. Himanshu Shrimali :

Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Deputy Director of Income Tax (Investigation), New Central Revenue Building, Bikaner (Rajasthan)
3. The Director of Income Tax (Investigation), Central Revenue Building, Statue Circle, Jaipur (Rajasthan)
4. The Assistant Director of Income Tax (Investigation), Rani Bazar, Bikaner (Rajasthan)
5. The Deputy Director of Income Tax (Investigation) Rani Bazar Bikaner (Rajasthan)
6. The Addl. Director of Income Tax (Investigation) Paota C Road, Jodhpur (Rajasthan).
7. Chief Commissioner of Income Tax, Statue Circle, Jaipur (Raj)
8. Mahaveer Singh Naruka, s/o Shri Shankar Singh Working as peon C/o In the Office of Income Tax Commissioner, Jaipur.
9. Ajay Singh Working as Peon C/o In the office of Chief Income Tax Commissioner, Jaipur.
10. Shyam Singh S/o Ashok Singh Working as Peon c/o In the Office of Director Income Tax (Investigation) Statue Circle, Jaipur (Rajasthan).



(Signature)

(Signature)

: Respondents.

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Rep. By Mr. Varun Gupta : Counsel for respondents 1 to 7

None Present for respondents 8 to 10.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

The applicant has filed this O.A under Sec. 19 of the Administrative Tribunals Act, 1985, and prayed for the following reliefs:

- i) Respondents may kindly be directed to allow the applicant to join his duties as he had been working continuously as no termination order issued against him in writing.
- ii) Respondents may kindly be directed to regularize the services of applicant.
- iii) Respondents may kindly be directed to consider the candidature of the applicant in pursuance of the advertisement dated 30.01.2005 (Annex. A/5)
- iv) Or pass any appropriate order or direction which this Hon'ble court deems just and proper in the interest of justice.

2. The applicant was appointed on daily wages basis under the respondents on 02.11.1998 and he continued to work as Cleaner, Waterman, Driver etc upto 13.01.2006. Therefore the applicant has served as Class IV employee for about 8 years under the respondents. On 14.01.2006, he was orally informed to come after 2 or 3 days and finally on 19.01.2006, the applicant was verbally informed that his services have been terminated although no order of dismissal was served on him.



3. The respondents for the purpose of filling up Group D posts, issued an advertisement dated 30.01.2005 (Annex. A/5) calling for applications from the eligible candidates. In the above advertisement for Class IV posts minimum educational qualification prescribed was 8th Pass and for the post of Chowkidar the minimum

educational qualification prescribed was 5th pass. It was further mentioned that candidates who possess the certificate of training in civil defence as well as experience in typing, computer, Photostat, electricity work, gardening and driving shall be given priority while making appointment on the Group D posts. As the applicant was eligible and qualified for the said post, he submitted his application in the prescribed proforma along with necessary credentials. But he was not called for the interview. Though the applicant was fully qualified and having worked in the department for 8 years as daily wager, his candidature was not considered whereas persons with lesser years of service as daily wager i.e. respondents 8 to 10 were considered and given appointment. Aggrieved by the above, the applicant has filed this O.A praying for the reliefs as given in para 1 above.

4. The official respondents are contesting O.A by filing a detailed reply pleading that the subject matter of the present O.A is not within the jurisdiction of the Tribunal as the issue involved in the matter is not with respect to recruitment and conditions of service of a person appointed to public services and post in connection with affairs of the Union or other local authorities within the territories of India or under the control of Government of India. More over, the subject matter is also having no nexus whatsoever with these disputes and therefore, the subject matter is not at all incidental to it.



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5. The applicant was engaged for performing certain contingent works and consequently he was asked to undertake the works of waterman, cleaner, driver and chowkidar keeping in view of the exigencies. The applicant was not appointed on any permanent post in the department and on the contrary he was hired from time to time as and when need of daily wager arose. The applicant was engaged as daily wager from time to time to undertake the contingent work in the department. The applicant has not served as daily wager uninterruptedly.

6. The respondents have further stated that daily wager is not employed by following regular process of recruitment and therefore, by very nature of his appointment, he does not acquire any right. Such employees do not have any right to any regular permanent or public employment. An incumbent who accepts engagement either temporarily or casually in nature is very much aware about nature of employment because he accepts the employment with open eyes. Thus there is no legal right available to the applicant which is sought to be enforced through this O.A. If the right of the applicant is considered in the light of very clear constitutional scheme then it cannot be said that the temporary, contractual or daily wage employees are in a position to establish a legal right to be made permanent because they were never appointed in terms of rules or in adherence of Art. 14 and 16 of the Constitution of India. Moreover for engaging an incumbent as daily wages employee or casual employee neither the relevant



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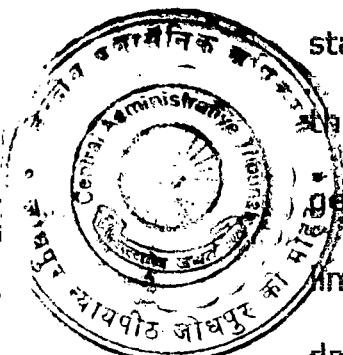
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rules are followed, nor such engagement is made after a proper competition amongst qualified persons. Thus such engagement would not confer any right on the applicant. A daily wager can be discontinued at any time as and when the department is not requiring services of that incumbent for the contingent work.

7. The respondents have further stated for filling up direct recruitment quota vacancies of six peons (2 general, 2 ST and 2 OBC) and one chowkidar (General) the CCIT Jaipur issued an advertisement. The essential qualification prescribed for peons is 8th Pass and for that of Chowkidar it was 5th Pass. Thus it is clear that no post was specifically earmarked for SC category. It was also mentioned in the advertisement that for the post of peon, candidates with experience in typing computer, Photostat, duplicating, electric work, gardening and car driving will be given priority. In response to the advertisement, for 7 posts 21,000 applications were received and candidates were short listed as per recommendations of the committee constituted. The Committee recommended that minimum qualification could be raised to X standard pass. As there was no post earmarked for SC category, the applications submitted by SC candidates were treated as general category candidates applications. Since the maximum age limit for general category candidate is 27 years and the applicant's date of birth being 03.06.1973, he was over aged and as such he was not called for interview being ineligible.

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8. The respondents have pleaded that as held by the Supreme Court in the case of **Om Prakash Baburam Sharma vs. State of MP** [1979 (1) SLR 736] " any person who possesses the qualifications requisite for eligibility has a right to apply for the post but there is no right to be called for interview merely because he is eligible for being appointed. The Apex Court in the case of **Secretary State of Karnataka vs. Uma Devi** [(2006) 4 SCC 1] has held that a casual or daily rated employee who has not been appointed in accordance with constitutional scheme cannot complain about violation of Art. 14,16 and 21 of the Constitution of India in the event of his discontinuance or non conferment of permanent status. In view of the above pleadings the respondents have prayed for dismissal of the O.A with costs.

9. Learned counsel for the parties have been heard. They have reiterated the averments made in their respective pleadings.

10. This case has been considered carefully and the documents placed on record perused. As regards the objection raised by the respondents that the issue involved in this case is not with respect to recruitment and therefore this Tribunal has no jurisdiction to entertain this O.A, this Court is of the view that the advertisement issued by the respondents is for filling up the posts of Group D employees. The respondent department is coming under the Union of India, the subject matter relates to recruitment and matters concerning recruitment being a post filled by a civilian. It would be

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pertinent to quote relevant portion of Sec. 14 of the AT Act, 1985
which reads as under:

Jurisdiction, Powers and Authority of Tribunals.

14. Jurisdiction, powers and authority of the Central Administrative Tribunal

(1) Save as otherwise expressly provided in this Act, The Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except Supreme Court in relation to---

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

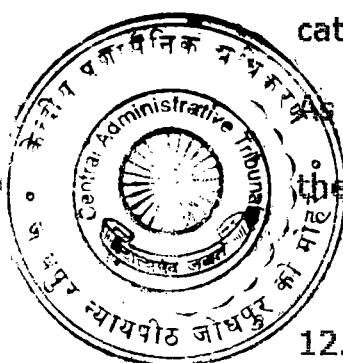
As the matters concerning recruitment are very much covered in the purview of the Central Administrative Tribunal, the objection of the respondents is not sustainable.

11. It is seen that the applicant had worked with the respondents as Daily wager for the period from 1998 to 2006. The respondents have called for applications for filling up 6 posts of Class IV (2 General, 2 ST and 2 OBC) and one post of Chowkidar (General). No post was earmarked for SC category. As the applicant belong to SC category, his name could not be considered against SC category and his name was considered against General category.

As the applicant was apparently over aged he was not called for the interview.

12. In view of the legal position and the discussions above the present application is devoid of any merits and the same is hereby disallowed. However, the applicant has served in the department from 1998 to 2006. He appears to have worked with sincerity and

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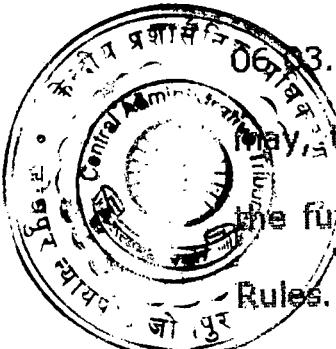
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commitment as per certificate dated 06.07.2001 (page 14)

certificate dated 03.12.99 (page 15) and certificate dated

06.03.2002 (page 16) issued by the respondents. The respondents

may, therefore, like to consider the case of the applicant against
the future vacancies of Group D posts/on daily wage basis as per
Rules. No order as to costs.



Tarsem Lal 27/8/08
[Tarsem Lal]
Administrative Member.

Jsv.

~~Rec'd copy
of order
of 26/8/08~~

Copy Received.
on behalf of
Hemant Chintawali
~~26/8/08~~