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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 35/2012

Jodhpur this the 7th day of May, 2013.

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)

Chain Singh S/o Shri Sang Singh, aged 33 years, R/o village Ketu mada, Tehsil Shergarh, District Jodhpur; Ex-Casual Labour, 73 COY ASC (Supply) Type F, Jodhpur

.....Applicant

(Through Advocate Mr Vijay Mehta)

Versus

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

2. Commandant, 73 COY ASC (Supply) Type F, Jodhpur

(Through Advocate Ms K. Parveen)

..... Respondents

ORDER (Oral)

By way of this application, the applicant has sought following relief (s) :

"The applicant prays that the order of verbal termination may kindly be quashed and set aside and the respondents may kindly be directed to reinstate the applicant with continuity of service and with all consequential benefits and be further directed to regularize the services of the applicant from the date of his appointment or from any other date as deemed fit by this Hon'ble Tribunal with all consequential benefits. It is also prayed that the respondents may kindly be directed to make payment of wages of Rs 3700/- for the month of January 2012 with interest thereon at the rate of 12%. Any other order, giving relief to the applicant may also be awarded to the applicant with costs."

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2. The short facts of the case are that the applicant was continuously serving in 73 COY ASC (SUP) since the year 2005 as casual labour. The respondent-department have framed Model Standing Orders vide order dated 22.03.1982 and 21.09.1984 by which it has been enjoined upon the authorities to regularize services of the casual labour who have completed more than six months of service. The respondent No. 2 instead of regularizing the services of the applicant has terminated the services of the applicant by verbal order dated 01.02.20012. Being aggrieved by the said order, as it is illegal and violative of legal rights of the applicant, applicant has filed this OA for the relief narrated in para No. 1. In support of the application, the applicant has annexed Annex. A/1 letter dated 20/08/2009 issued by the Captain, Administrative Officer for Commandant to the SHO, Police Station Sher Garh, Teh. – Sher Gard, Distt. Jodhpur, Rajasthan for character verification and entry pass of the applicant and copy of the Model Standing Orders vide order dated 22.03.1982 and 21.09.1984 and judgment of this Tribunal passed in Ganesh Ram vs UOI & Ors in OA No. 205/1996.

3. The respondents by way of reply denied the fact that the applicant has been continuously working since 2005 in the respondent-department and further averred that the applicant was employed by the respondents w.e.f. March, 2011 to January, 2012 as a daily wager and he worked only for 155 days, therefore, he is not eligible for regularization ever as per Model Standing Orders

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issued vide order dated 22.03.1982 and 21.09.1984 because he never worked for 240 days in a year. Therefore, he is not entitled for grant of any temporary status for regularization. In reply it has been subsequently averred that casual labour employed on daily wages has no right in service in view of the judgment of the Hon'ble Apex Court. Therefore, the claim of the applicant is not maintainable and sustainable in the eyes of law. The applicant's services were discontinued after completion of 155 days as the services of the applicant were no longer required by the respondent-department. The respondent-department has also averred that no documentary evidence has been produced by the applicant in support of his claim and prayed to dismiss the application.

4. By way of rejoinder the applicant while reiterating the earlier pleadings averred that the respondent-department has not produced any document in support of the reply. All the relevant documents like attendance register, Gate Pass, In and Out Register and vouchers of payment and Payment Register are available with the respondent-department but to deny the right of the applicant they have suppressed all these documents and have not annexed with the reply.

5. Heard both the parties. Counsel for the applicant contended that respondent's version that the applicant has not filed any document is totally misconceived because applicant is illiterate casual labour and he has never got accessed to the documents and he would not have been paid almost any amount without vouchers or register being maintained and also not allowed to be entered in

the Unit without entry in In & Out Register. Annexure A/1 clearly shows that he was working with the Unit as civilian worker and further contended that all these documents have not been denied by the respondent-department in the reply but intentionally avoided sanctity of Annex. A/1. It is for the respondent-department to produce the documents in support of reply. The respondents have not explained as to why they called for police verification of the applicant vide Annex. A/1 in the year 2009 and vide Annex. A/2 in the year 2011 while the applicant was engaged only for 155 days in the year 2011-12.

Per contra counsel for the respondent contended that applicant has not worked for 240 days in a year, therefore, he has got no right for regularization. Further he contended that in the light of Uma Devi case no candidate is entitled for regularization.

6. I have considered rival contentions of both the parties and also perused the relevant record. In this case the respondent-department has not denied the sanctity of Annex. A/1 letter and Annex. A/1 clearly shows that applicant had worked in the respondent-department in the year 2009 and in my view it was the duty of the respondent-department to produce all the relevant documents available and maintained by them viz. attendance register, Gate Pass, In and Out Register and vouchers of payment and Payment Register. How the applicant can have copy of all these documents and produce these documents?

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7. After considering all the contentions raised by both the parties, there are no reasonable grounds to reach to the conclusion that applicant had not worked with the respondent-department in Aug 2009 because at that time his verification of character was called from SHO, Police Station Sher Garh, Teh. – Sher Garh, Distt. Jodhpur, Rajasthan while mentioning the fact that the applicant is working with the Unit as civilian worker. This fact has been suppressed by the respondent-department without any reason.

8. Therefore, OA is allowed with the directions to the respondent-department to consider the case of the applicant for regularization in the light of entries available with them in Gate Pass Issue Register, In and Out Register, vouchers of payment and Payment Register maintained by them and after considering all these documentary evidence available with them, on the basis of these documents they shall pass a speaking order within 3 months from the date of receipt of this order. If the applicant has any further grievance regarding the order of the respondent-department, he may file fresh OA.

9. OA is allowed in terms of above direction. There shall be no order as to costs.


(Justice K.C. Joshi)
Judicial Member