

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No.398/2012

Jodhpur this the 03rd day of March, 2014

CORAM :

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

Varsha Mehta D/o Shri Satish Chandra Mehta, aged about 30 years, R/o 1338, Adarsh Nagar, Sec-4, Udaipur, at present employed as Casual Computer Operator in the office of ITO Ward-1 (4), 6, New Fatehpura, Udaipur.

.....Applicant

(Through Adv. Mr. J.K.Mishra)

Versus

1. Union of India through Secretary to Govt. India, Ministry of Finance, Deptt. of Revenue, North Block, New Delhi.
2. Commissioner of Income Tax, 16, Mumal Tower, Saheli Marg, Udaipur-313001.
3. The Income Tax Officer, Ward-1 (4), 6, New Fatehpura, Udaipur.

.....Respondents

(Through Adv. Mr. Sunil Bhandari)

ORDER (Oral)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to take the applicant on duty and assign her appropriate job i.e. Casual Computer Operator, on which she had been continuing for the last about 10 years forthwith and further to allow her all consequential benefits including treatment of the interregnum period as spent on duty for all purposes including the wages.

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2. The brief facts of the case, as averred by the applicant, are that the applicant was initially engaged as Casual Computer Operator on 20.09.2004 in the office of respondent department. It has been further averred that the casual worker/daily wagers were being paid @ Rs.292 per day in the month of May, 2011 and when their wages were sought to be reduced to Rs.164, the applicant along with 4 others filed OA No.537/2011 (*Sohan Lal Dangi & Ors. vs. Union of India & Ors.*), wherein an interim relief was granted vide order dated 07.12.2011. The applicant along with others had to also file another OA No.563/2011 (*Kamlesh Kumawat and Other vs. Union of India & other*) challenging the illegal action of the respondent department whereby the applicant alongwith other similarly situated casual workers sought to be replaced/terminated by outsourcing labour through contractor. The applicant has stated that this was done in contravention to the orders to the effect that persons working continuously as on date i.e. 10.11.2010 were not to be discontinued. It has been further averred in the OA that the applicant has been continuing without any interruption upto 20.04.2012 and on 20.04.2012 she submitted an application for seeking leave for about a month for the reason that her marriage was going to be celebrated. The applicant reported back on duty on 01.06.2012, but she has not been assigned duty and was told to wait for some time. Thereafter, the applicant consistently requested his controlling authority, but neither any reason has been disclosed for not taking her on duty, nor she has been

taken on duty. The applicant further made a representation on 23.07.2012 but the same was refused by the respondents. Therefore, the applicant by way of this application has sought the reliefs mentioned in para No.1 above.

3. By way of reply, the respondents have denied the claim of the applicant and submitted that the applicant has assailed the policy of the respondents to engage the employees through contractor and the same does not fall within the ambit of service matter and further as the applicant is not appointed to the public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, therefore, the Tribunal cannot interfere with this matter, as the same is not maintainable. The respondents in para No.4.5 of their reply averred that no daily wager can file any leave application and as such, no leave is required to be entertained in the case of daily wager, as they are not governed by any leave rules. Since the applicant was never employed on permanent basis, therefore, the Department is not answerable for non-engagement of daily wagers, when such work is no more needed by the department. Hence, by way of reply the respondent department prays to dismiss the OA.

4. In rejoinder, the applicant reiterated the same facts as averred in the OA.

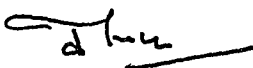
5. Heard the arguments of both the parties. Counsel for the applicant contended that the applicant filed a separate OA bearing No.563/2011 along with other employees and in that OA, an interim stay was granted by this Tribunal. Ultimately the OA No.563/2011 was decided with other identical matters on 29.10.2013 by which it was ordered that the applicant along with other similarly situated persons may be continued to be on rolls of the respondent organization and they should be allowed to mark their attendance, and may be continued to discharge their duties till a decision on the subject by the Hon'ble High Court. In addition to it, it has been ordered that those who willingly wish to join to avail the employment through the contractors/service providers, may be given the first preference in doing so. It has been further contended that the applicant on account of her marriage ceremony, applied for leave on 20.04.2012 informing the respondent department and seeking leave for about a month, and after availing the leave upto 31st of May, 2012, on 01.06.2012, the applicant reported back on duty, but she has not been assigned duty and was told to wait for some time. The applicant consistently requested his controlling authority, but she was not taken on duty without assigning any reason to her. The applicant then sent a letter/representation dated 23.07.2012 by Speed Post to the respondents No.2 &3, but the same has been refused by them. Counsel for the applicant further contended that the Annexure-A/4 representation was refused by the respondents No.2&3 as is evident from Annexure-A/5.

6. Per contra, counsel for the respondents contended that the issue regarding the interim relief granted in OA No.563/2011 and further allowing the said OA is different matter than the relief sought in the present application because in the present OA, the applicant herself left the office without proper sanction of leave and never reported back in the office and she has filed the representation on 23.07.2012 for the first time in this OA. When the applicant has left his services willfully/voluntarily then now she cannot be engaged again as Casual Computer Operator in the respondent department. He further contended that the applicant has not filed any leave application as alleged in the OA and in the absence of any such leave application, the case of the applicant cannot be considered and the same was refused rightly by the respondent department.

7. I have considered the rival contentions of both the parties and perused judgment of this Tribunal passed in OA No.563/2011 along with other OAs and the interim order passed by this Tribunal vide Annexure-A/1. In my considered view, the issue regarding Annexure-A/1 or the decision of OA No.563/2011 is on entirely different question. Although, this Tribunal has directed the respondent department to take back the applicant along with others in service in OA No.563/2011, but in this particular case, the applicant has left the office without there being any proper sanction of leave, which was not filed by the applicant with this OA, and when an employee remains absent for more than one month without any information, it gives no cause of action to the applicant to

remain in service after reporting back, who was simply a Casual Labour and was being paid wages at the daily rate.

8. Accordingly, in my considered view, no case is made out in favour of the applicant to grant relief(s) as sought in the OA. Therefore, the OA is dismissed with no order as to costs.


(Justice K.C. Joshi)
MEMBER (J)

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