CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
No.OA 5 of 1997

Present : Hon'ble Mr. Justice B.Panigrahi, Vice-Chairman

Pradeep Kumar Behera,
S/o Maguni Charan Behera,
Former casual Worker in the
Directtorate of Income-tax (Inv.)
Calcutta, P-13, Chowringee Sq.
R/o K.B.Block, Room No. 1004,
Salt Lake, Calcutta-700 091.

VS

1. Union of India through the
Secretary, M/o Finance,
Deptt. of Revenue, New Delhi.

2. The Under Secretary, CBDT,
Central Secretariat, North Block,
New Delhi

3. Chief Commissioner of Income-tax,
Aayakar Bhawan, P-7 Chowringee Sq.
Calcutta-700 069

4, The Diector of Income-tax (Investigation)
P-13, Chowringhee Sq. Calcutta-69

For the applicant : Mr. S.K.Gupta, Counsel

For the respondents : Ms. Uma Sanyal, Counsel

Heard on : 3.12.03 : Order on : 15 .12.03

O R D E R

The applicant through this OA has challenged his disengagement as casual labour under the respondents. He has prayed for his reinstatement and also for grant of temporary status.

2. The applicant has stated that he was engaged by the respondent authorities as casual worker on 4.4.94 and was continuing as such on occasional breaks. Suddenly by a verbal order he was summarily terminated w.e.f. 8.1.96. His contention is that he had worked for more than 206 days in a year for the years 1994 & 1995 and therefore he was entitled to be conferred temporary status and consequential absorption in Group 'D' post under the respondents. But the respondents have arbitrarily terminated his service although they have retained the service of other casual labourers engaged along with him. Hence this OA.

3. The respondents have contested the application by filing a reply in which it is admitted that the applicant was engaged as daily rated casual worker to do certain job as and when needed. No formal appointment order was given to him. However, his services were disengaged from 8.1.96 as he was found to be involved in some illicit activity on 6.1.96 which was witnessed by the departmental officials. It is contended that since the applicant was a daily rated casual employee and was not a regular staff, there was no question of giving him any show cause notice before termination and hence he was been disengaged from service by verbal orders.

4. I have heard the ld. counsel for the parties. The ld. counsel for the applicant has contended that the applicant was engaged by the respondent authorities on daily rate basis in the year 1994 and he had worked for more than 205 days in two consecutive years i.e. 1994 & 1995. However, suddenly his services were terminated from 8.1.96. He has argued that for the first time from the reply of the respondents that it is revealed that the services of the applicant were disengaged for his alleged involvment in illicit activity on 6.1.96. He has pointed out that there is no details of the illicit activities in which the applicant was involved. Nor the names of the employees who witnessed such illicit activity allegedly indulged in by the applicant has been mentioned. He has contended that when such stigma is attatched to the applicant while terminating his service, it was incumbent on the respondent authorities to issue a show cause notice and to give him an opportunity before his services were disengaged.

5. So far as the issue regarding issue of show cause prior notice is concerned, it is true that nobody can be condemned without giving an opportunity to defend himself. In para 8 of the reply the respondents have stated that the applicant was engaged to do certain job as and when needed and he was being paid on daily rate basis as a casual worker. However, his service was considered to be no longer required from 8.1.96 as "he involved himself in some illicit activity

on 6.1.96". It is true that there is no details about the illicit activity in which the applicant was allegedly involved and the names of the persons who witnessed the incident have also not been disclosed. All these questions would have certainly arises if an opportunity was given to the applicant or a show cause notice was issued to him in that regard. However, it is contended by the respondents that since the applicant was a casual employee and was being paid on daily rate basis he had no right to continue, whether he was involved in illicit activity or not.

6. I am inclined to accept this contention of the respondents that the applicant has no legal right to seek protection under Article 311 of the Constitution like a temporary or regular employee. In this context it may be useful to refer to a decision of the Hon'ble Apex Court in Narsingh Pal -vs- Union of India & Ors. reported in 2000(3) JT (SC) 593. In that case a temporary status holder casual labour after rendering for more than 10 years service was found to have been involved in a criminal case. He was therefore dismissed from service without holding any enquiry. However, subsequently he was acquitted in the criminal case and the appellant prayed for his reinstatement and filed a case before the Principal Bench of CAT which was dismissed. The Delhi High Court also dismissed the Writ Petition against the decision of the Principal Bench of the CAT. However, the Hon'ble Apex Court on appeal held that the order of the respondent authorities terminating the service of the appellant was ex facie punitive and involvment of the appellant in the criminal case was the reason for such dismissal. The Hon'ble Apex Court held in para 13 of the order that the appellant though was a casual labour had attained temporary status after having putting in 10 years of service. Like any other employee he had to sustain himself or may be his family members were also dependent on the wages he got. Therefore he had a fundamental right available under the Constitution. Since the termination of the appellant was punitive in nature and was in violation of the principles of natural justice and his constitutional

right was violated, such order cannot be sustained.

7. In the instant case, the applicant has not admittedly attained the temporary status. He has rendered service according to his own version for a total period of 390 days in the year 1994 & 1995. He had therefore no legal right to be continued as his engagement was dependent on availability of work.

8. In that view of the matter, I am of the opinion that the applicant was not entitled to get protection under Article 311 of the Constitution and no show cause was necessary to be given before his disengagement though certain allegation has been made which has not been proved beyond doubt. Be that as it may, even otherwise, he was not legally entitled to continue as casual worker.

9. The applicant has also claimed for grant of temporary status. From the averments made in the application it appears that the applicant had rendered 200 days of work for the first year i.e. 1994 and 190 days in the second year. Thus in both the consecutive years he did not render 206 days of work which is required in order to be eligible to be granted temporary status as per Govt. orders issued from time to time in this regard.

10. In this context the decision of the Hon'ble Apex Court in the case of Union of India & Ors. -vs- Mohan Pal etc. etc. reported in 2002(1) SC SLJ 464 may be referred to. The Hon'ble Apex Court has held therein that the scheme of 1993 provides that a casual labour, who had completed 240 days of work in a year or 206 days (in the case of offices observing 5 days a week) would be entitled to temporary status. It was held that conferment of temporary status was to be given to the casual labours who were in employment as on the date of commencement of the scheme. In this case the applicant was engaged in 1994 i.e. after commencement of the scheme. Moreover he did not render 206 days of work in each year. Therefore he cannot get the benefit of the conferment of temporary status. In para 7 of the scheme vide DOPT's circular dated 10.9.93 (vide Swamy's Compilation on Establishment & Manual, 1999 Edn. pages 228-230 ) it was provided

that despite conferment of temporary status the service of a casual labour may be dispensed with by giving one month's notice in writing. The Hon'ble Supreme Court however, opined that temporary status casual labourers cannot be removed merely on the whims and fancies of the employer.

11. Since the applicant is not eligible to get temporary status under the aforesaid scheme as he did not render 206 days of work in a calender year according to his own averment there was also no need to issue any notice before his disengagement.

12. In this context another decision of Hon'ble Supreme Court in Surendra Kr. Sharma -vs- Vikash Adhikary & Anr. reported in 2003(3) ATJ 547 may be referred to. In that case the Hon'ble Apex Court has held as under :

> "...The Court held that the petitioners cannot be directed to be regularized on the only ground that they have put in work for 240 or more days, as such directions lead to pernicious consequences. Although there is the Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employe and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 140 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed, resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts."

13. For the reasons stated above I donot find any merit in this case and it is, therefore, liable to be dismissed.

14. Before parting with this case I would like to observe that in the OA the applciant has stated that he had earlier filed OA 1233/95 which is still pending. However, the respondents in their reply in para 9 has stated that the applicant himself had withdrawn from the said OA.

15. However, I have consulted the records of OA 1233/95. I find that in that case the applicant was the applicant No.1 and there were three other applicants. They all prayed for grant of temporary status. I do not find any order whereby the applicant had withdrawn himself from the said case as stated by the respondents. However, an MA bearing No. MA 209/96 was filed seeking amendment of the relief para of the said OA wherein three other applicants excepting the present applicant prayed for regular appointment against Group 'D' post along with candidates sponsored by the Employment Exchange. However, that OA is pending and the name of the applciant is still there as applicant No.1.

16. Since the applicant cannot file two applications on the same cause of action, the present OA is liable to be dismissed in limini. Still I have considered the case on merit as well.

17. Let a copy of this order be placed along with the records of the OA 1233/95 and MA 209/96 for reference.

18. In the result, the OA is dismissed without any order as to costs.

VICE-CHAIRMAN