

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

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LUCKNOW

Lucknow this the 17th day of ^{Feb} ~~Jan.~~, 2000.

O.A. no. 160/92

HON. MR. D.C.VERMA, MEMBER(J)

Dinesh Kumar Shukla, son of Shri Hausila Prasad (aged about 27 years), resident of village Mangi Chandpur, Post Office Aihar, Police Station Rudauli, District Barabanki.

Applicant.

By Advocate Shri A. Moin.

versus

1. Union of India through Secretary, Ministry of Telecommunication, New Delhi.
2. Chief General manager, Telecommunication, U.P. Lucknow.
3. Divisional Engineer, Telegraph, Sitapur.
4. Sub jDivisional Officer, Telegraph Hardoi.

Respondents.

By Advocate Shri A.K. Chatruvedi.

O R D E R

By this O.A., the applicant has claimed that he be allowed to continue his work and the stoppage of his work be declared as illegal, null and void.

2. The applicant claims that he was initially appointed as daily rated casual labour on 2.11.85 in Department of Telecommunication. The applicant worked as such for about 410 days in total, from time to time till 16.6.1987 as per details given in Anneuxre 1 to the O.A. On 16.6.87, the services of the applicant were orally stopped and he was not given any engagement thereafter. The applicant made representations but failed to get any relief, hence this O.A.
3. The respondents have contested the claim of the applicant by filing Counter Affidavit. The respondents' case is that the applicant has not completed 240 days in any year. The applicant was engaged as a casual labour on day today basis and the applicant could not

be absorbed as there was no work in the Department.

4. During the course of arguments the learned counsel for the applicant has not claimed any relief under Industrial Disputes Act but has prayed the benefit as was given by the Principal bench in O.A. 2172/88 decided on 15.1.90 in the case of Smt. Shila Goel vs. Union of India and others (copy Annexure-4 to the O.A.). The submission of the learned counsel is that in the cited case, the Principal bench had directed regularisation of the services of the applicant therein, in accordance with the length of seniority in the available vacancies and to follow the principle of last come, first go, in the event of non availability of enough vacancies, to accommodate all the applicants as casual labourers.

5. Heard the learned counsel for the parties. The learned counsel for the respondents has submitted that the O.A. is barred by limitation. The applicant was not engaged, on his own showing, after 16.6.87 and the present O.A. has been filed in the year 1992. The learned counsel, has, therefore placed reliance on the decision of this Bench given in the case of Uma Kant Mishra vs. Union of India and others (O.A. No. 95/97) decided on 13.1.2000.

6. The learned counsel for the applicant has, on the other hand submitted that as per the Scheme of 1989 for grant of temporary status and regularisation of casual labourers the case of the applicant should have been considered by the Department. Further submission is that the cut off date given in the para 3 of covering letter, ^{that} no casual labour who ~~on~~ has been engaged after 30.3.85, should be granted temporary status without specific approval of the Department, is not a sacrosanct date as per the decision of the Mumbai Bench of the Tribunal reported in 1999(3), A.T.J. 546.



7. The applicant was initially engaged on 2.11.85. Even if the argument of the learned counsel for the applicant with reference to the decision of Mumbai Bench be accepted, the applicant would not be able to get any relief, because as per the respondents, the casual labourers are not engaged in the Department at all, though in para 4.7 of the O.A, there is a recital that juniors to the applicant have been retained, but names and details of any such juniors have not been given. A bald statement ~~inxxxxxxxxxxxxxxxxxxAffidavit that casual~~ cannot be accepted, because there is a specific recital in the Counter Affidavit that casual labourers are not engaged in the Department. There being no evidence to show that any person junior to the applicant is working in the Department, the applicant has no claim for engagement on that ground.

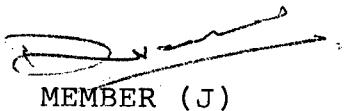
8. The learned counsel for the applicant has placed reliance on the decision of the apex court in the case of Daily rated Casual Labour vs. Union of India and others reported in 1987(5) ATC, 228 whereby a direction was given to prepare a scheme on rational basis for absorbing, as far as possible, the casual labourers who have been continuously working for more than one year in the Post and Telegraph Department. It is after the decision of this case that the Scheme of 1989 was formulated. Thus the claim of the applicant is to be seen in accordance with the scheme.

9. The scheme of 1989 has been considered in the case of Uma Kant Misra (Supra). The case of Uma Kant Misra was filed in the year 1997 whereas the present O.A. has been filed in the year 1992. The case of one Ram Kumar, O.A.No.657/92 is cited in the case of Uma Kant Misra (Supra). In the case of Ram Kumar (Supra) the relief was granted and the respondents were directed to consider the applicant therein for grant of temporary status under the said scheme. Uma Kant

(13)

Misra was not granted any relief because Uma Kant Misra had worked only ^{upto} ~~on~~ 20.10.1983 and had filed the O.A. in the year 1997 i.e. after about 15 years, Thus on facts the case of Uma Kant Misra differ from the facts of the present case. In the present case the applicant was appointed on 2.11.1985 and claims to have worked for at about 410 days, from time to time, till 6.6.1987. The present O.A. has been filed in the year 1992. The scheme for grant of temporary status was introduced in the year 1989. ^{with} ~~As per~~ the letter No.269-10/89-STN vis-a-vis, the scheme was circulated. In the case of Casual Labourers engaged after 30.3.1985, the case for grant of temporary status was to be referred to the Telecom Commission with the relevant details and particulars for specific approval. ~~of the said office~~. There is nothing on record to show that the case of the applicant was referred as per the said circular for specific approval. If the applicant actually worked for the period claimed by him, his claim should be examined in terms of aforesaid letter, as the same has not been done the O.A. is allowed with the directions to the respondents to consider the case of the applicant and examine the number of working days and incase the applicant is found eligible for conferrment for temporary status the case be referred to the Telecom Commission for specific approval. Incase, it is found that the applicant is eligible and entitled for grant of temporary status an order to that effect be passed but no retrospective effect would be available to the applicant.

10. In view of the discussions made above the O.A. is allowed as per the aforesaid directions. Cost easy.


MEMBER (J)

Dated: 11.2.2000
Lucknow.