

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No. OA-230 of 1996

(Date of order 14.5.1998)

Prem Nath Sharma, S/o Shri Bihari Thakur,
aged about 26 years, resident of Mohalla
New Yarpur, Janta Road, P.O.Patna G.P.O.
P.S. Gardanibagh, District Patna Applicant
By Advocate: Mr.N.P..Sinha. *LLB*

versus

1. Union of India through Secretary,
Ministry of Defence (Finance Division),
and Financial Adviser (Defence),
Govt. of India, South Block,
New Delhi-110 001.
2. Controller General of Defence Accounts,
West Block, V, R.K.Puram, New Delhi-110066.
3. Controller General of Defence Accounts,
Patna-800 001.
4. Joint Controller of Defence Accounts,
Office of the CDA, Patna-800001
5. Officer-in-Charge, F.A.C, A.O.(RS)
Bihar Regiment Centre, Danapur Cantt,
P.O.Danapur Cantt. District Patna.
6. Shri Bhagwan Singh, S/o Late Ram Gour Singh,
Mohalla Sital Tola in the town of Ara(Bhojpur)
aged about 20 years, and at present Casual Mazdoor,
Office of the P.A.O., A.O.(ORS), Bihar Regiment
Centre, Danapur (Patna), P.O.Danapur Cantt,
District Patna.

Respondents

Mr. P.K.Jipuriar, Counsel for Respondents.

Coram: Hon'ble Mr. Justice V.N.Mahrotra, V.C.

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

This OA has been filed by the applicant with the prayer that the respondents be commanded not to remove the name of the applicant from the approved list of Casual Mazdoors in their unit and that the respondents be also commanded to keep the name of the applicant above the name of respondent No.6 in the list of approved casual mazdoor. The applicant has also prayed that the respondents be directed to utilise the services of the applicant whenever the vacancy occurs prior to the utilisation of services of respondent No.6.

2. The applicant has alleged that in 1992 vacancies of Casual Mazdoors cropped up under the respondents. Therefore, to enlist persons, the respondents called for names from the Employment Exchange, Patna. The Employment Exchange sponsored the names of several persons including the applicant. Six persons were interviewed after which the applicant was ordered to work in the office of respondent no.5 as a casual labourer. The applicant worked from 14.5.1992 till 16.8.1995. He was initially ordered to work for 89 days by letter dated 13.5.1992. The work of the applicant was satisfactory and there was no complaint against him. The respondents became interested in respondent no.6. They called for fresh names from Employment Exchange, Patna in the year 1995. The applicant also submitted an application to the authority concerned for regularisation of his services. As the respondents were more interested in respondent no.6, they did not consider the case of the applicant. After the interview was held the name of the applicant was deleted from the list of casual labourers on the ground that he was not found fit in the year 1995 by the Selection Board. The respondents engaged the respondent no.6. It is claimed by the applicant that as he had worked satisfactorily

WL

for more than three years there was no reason to delete his name from the list of casual labourers and to appoint the respondent no.6 in his place. The applicant has further mentioned that he filed OA-609 of 1995 before this Bench. The same was heard and by order dated 30.10.1995, the respondent no.4 was directed to dispose of the representation filed by the applicant. The respondent no.4 considered the representation of the applicant and by order dated 19.8.1995, Annexure-A/5, rejected the same. The applicant claims that he should have been considered for regularisation and there was no reason to throw him out after he had worked for three years.

3. The respondents have alleged that there were no vacancies regarding the casual labourers nor any list of casual labourers was prepared by the department. It is asserted that for the engagement of casual workers for a short period sanction of the Head of the Office is mandatory. On receipt of the sanction the Sub-office calls for the names of some casual workers from the Employment Exchange. On receipt of the names from the Employment Exchange a Board of Officers is constituted to engage a casual worker. On the recommendation of the Board of Officers, the suitable candidate is engaged for carrying out seasonal nature of work. The applicant was engaged as a casual labourer in that manner. He was not engaged for work of a regular nature and there was no question of the preparation of the list of casual workers. Whenever any occasion arises the engagement of the casual worker is made for a very short period and on completion of the job he is disengaged. There is no question of deletion of the name of the applicant from any approved list of casual workers of 1992 as no such list had existed. The applicant was engaged for carrying out seasonal or intermittent nature of work for short periods as will appear from Annexure-A/7.

W.M.

In the year 1995 fresh names were called from the Employment Exchange. The cases of three persons including the applicant and respondent no.6 were considered and on the recommendation of Board of officers, the respondent no.6 was engaged. The respondents have also asserted that as the applicant has not rendered one year's continuous service the question of grant of temporary status or regularisation does not arise. It is claimed that the OA has no merit and so liable to be dismissed.

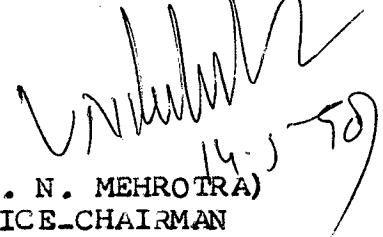
4. The applicant has filed rejoinder reiterating his assertions. He has contended that in a welfare state the respondents have no right to adopt the policy of hire and fire. It is claimed that the action of the respondents was arbitrary.

5. I have heard the learned counsel for the parties and perused the material on record. It is not disputed that the applicant was engaged as a casual labourer for doing seasonal/intermittent nature of work. In the first spell he worked for 89 days during the period 15.5.1992 to 10.8.1992. Thereafter he worked for 30 days from 1.12.1992 to 30.12.92. He then worked for 88 days in the year 1993 during the period 11.5.1993 to 6.8.1993. Thereafter he worked for 89 days during the period 2.5.1994 to 29.7.1994 then for 31 days during the period 1.5.1995 and 31.5.1995 and lastly for 26 days from 1.7.95 to 28.7.1995. It is clear from this that the applicant who was engaged for carrying out casual, seasonal/intermittent nature of work did not work for 240 days in any of the year from 1992 and upto 1995. The Central Government had framed a scheme for grant of temporary status and regularisation of casual labours. It is dated 10th September, 1993. In that scheme temporary status could be conferred on casual labourers who were in employment on the date of issue of that letter and who have

rendered a continuous service of atleast one year, which means that they must have been engaged for a period of atleast 240 days in a year. Obviously this scheme could not be applied to the applicant who had not worked for 240 days in a year as mentioned earlier.

6. The applicant contends that a panel of casual labours was prepared and his name was entered in the panel in the year 1992 after he was interviewed by the authorities concerned. The respondents have totally denied this assertion. According to them there was no panel of casual labourer and that when need arises, they call names from the Employment Exchange who are considered by the Board of officers and thereafter a person is engaged as a casual labourer for doing seasonal/intermittant nature of work. Though the applicant asserts that a panel of casual labourers was prepared there is no material on record to support this contention. From the documents Annexure-A/1 and A/2, it will appear that the applicant was initially engaged as casual labour for hot weather establishment for 89 days. Obviously, he ceased to work after the expiry of that period. Subsequently he was engaged for different periods upto the year 1995 as has already been mentioned. From this it cannot be inferred that there was any panel of casual labours in accordance with their seniority. It is not disputed that in the year 1995, the respondents again called the names of candidates from the Employment Exchange and considered their names after which they approved respondent no.6 for being engaged as casual labour. The applicant actually appeared before the Board of Officers at that time but respondent no.6 was, as alleged by the official respondents, found a better candidate. The applicant asserts that as he had been engaged in the year 1992, he should not have been disengaged by the respondents nor they should have appointed respondent no.6 in preference

to him. The learned counsel for the applicant has, however, not been able to show any rule or scheme under which the applicant could claim that he must be engaged by the respondents whenever work was available and they could not have engaged respondent no.6 in preference to the applicant. The applicant has no right to claim that he can continue or he should be continued as casual labourer by the respondents even though according to ~~these~~ ^{the} respondents the respondent no.6 was a better candidate. In my view no sufficient ground has been made out by the applicant to grant any of the reliefs claimed by him in this O.A. The O.A. is accordingly dismissed. No order as to costs.


(V. N. MEHROTRA)
VICE-CHAIRMAN