

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA

Date of Order:- 26.4.07-

Registration No. OA-386 of 2005

C O R A M

Hon'ble Shri Amit Kushari, Member (A)

Md. Kalim Ansari

...Applicant

-By Shri Gautam Bose

Versus

The Union of India & Others

....Respondents

-By Shri G.K. Agarwal, Additional Standing Counsel

O R D E R

Amit Kushari, Member (A):-Shri Gautam Bose argued on behalf of the applicant. Shri G.K. Agarwal argued on behalf of the respondents. Their arguments were heard and all the pleadings were perused carefully.

2. The applicant is a casual labour Safaiwala who was engaged in the department of Central Excise at Raxaul in September, 1991. He continued to work as a casual labour till 1.1.2005. The fact that he has worked as casual labour for the period was not denied by the respondents. On 1.1.2005 the respondent No.4 asked the applicant "not to come for work from tomorrow." In other words his services were verbally terminated. Shri G.K. Agarwal, counsel for the respondents drew my attention to the submissions made in the written statement by the respondents to show that the applicant was not at all working on a systematic basis. Sometimes he was working for four hours in a day and sometimes he was working for six hours in a day. Hence his services were "casual" in the real sense of the

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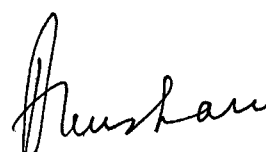
term". No proper termination order, therefore, was needed for such a casual worker and a verbal termination order was quite enough for him. Shri Gautam Bose pointed out that there were certain Government orders laid down by the DOPT governing the service conditions of casual labour. He drew my attention to Annexure-1 i.e. the DOPT scheme which governs the services of casual labour. This scheme -which was formulated by the DOPT after the Principal Bench of the CAT gave its verdict in the case of Raj Kamal versus the Union of India - envisages that any casual labour who has completed 206 working days on the date of issue of the DOPT's order (10th September, 1993) should be granted temporary status. The DOPT's order further mentions that a casual labour who has been granted temporary status could be disengaged after giving him one month's notice in writing. Shri Bose pointed out that the applicant in this case was not given one month's notice in writing, but was terminated verbally. Shri Bose drew my attention to Annexure-A-4 which gives the details of working of the applicant on year to year basis. The Assistant Commissioner, Central Excise Division, has issued a certificate which shows that the applicant, Shri Mohammad Kalim Ansari has worked for 178 days during the period from 1.6.1992 to 31.12.1992 and for 304 days during the period 1.1.1993 to 31.12.1993. This report/certificate of the Assistant Commissioner of Central Excise therefore indicates that upto 10th September, 1993 the applicant had definitely worked for more than 206 days in the department and therefore, he was entitled to get temporary status. Shri G.K. Agarwal, counsel for respondents does not deny the veracity of the certificate issued by the Assistant Commissioner but says that even if he had worked for more than 206 days upto 10th September, 1993 his services were utilised in an extremely casual

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manner on time to time basis and by no stretch of imagination he would be entitled to temporary status.

3. I have carefully considered the arguments of both the sides and I have examined all the material on record carefully. The DOPT's order of 10th September, 1993 covers all the casual labourers. It does not mention that casual labourers who are engaged for four hours or for five hours in a day and who are extra casual in their nature of service – will not be covered by this order. In the absence of any such specific clarification in the DOPT scheme it can be concluded that the scheme covered casual labourers of all hues -casual or extra casual. Even if the applicant Md. Kalim Ansari was an extra casual labour he will be governed by this scheme undoubtedly and since he has worked for more than 206 days till 10th September, 1993 he should be granted temporary status.

4. In the facts and circumstances of the case, I direct the respondents to take back the applicant as a casual labour immediately and grant him temporary status. The period from 1.1.2005 till his date of reengagement should be treated as duty-although he will not be entitled to any wages for this period since he has not actually worked. Regarding his demand for regularisation it is not possible for me to give any direction. He has to go through a normal selection process following all relevant rules and orders of the day. This OA is accordingly partly allowed. There shall be no order as to costs.


(Amit Kushari)
Member (A)