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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 3/8/2000

OA 409/94

Narendra Kumar Sharma, formerly working as casual labour in the Post & Telegraph Department, Railway Electrification Project at Kota.

... Applicant

Versus

1. Union of India through Secretary, Department of Telecommunication, Ministry of Communication, New Delhi.
2. General Manager, Telecommunication (RE), Community Centre, Janakpuri, New Delhi.
3. Asstt. Engineer, Telecommunication (RE), Community Centre, Janakpuri, New Delhi.

... Respondents

CORAM:

HON'BLE MR.S.F.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.F.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.P.P.Mathur, proxy counsel

for Mr.R.N.Mathur

For the Respondents

... Mr.Hawa Singh, proxy counsel

for Mr.V.S.Gurjar

O R D E R

PER HON'BLE MR.S.F.AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes prayers; (i) to direct the respondents to regularise the services of the applicant as Mandoor or Typist and to consider him for absorption as Typist, (ii) to quash the order dated 23.9.93, at Annexure

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A/1, and to direct the respondents to give employment to the applicant, (iii) to include his name in the seniority of workers, prepared for the purpose of giving employment.

2. Brief facts of the case, as stated by the applicant, are that initially the applicant was engaged on daily wage basis in the month of March, 1986 under the supervision and control of respondent No.3 and continued upto July, 1988. It is stated that the applicant worked for 865 days, which is evident from Annexure A/2. It is also stated that in July, 1988 the applicant was asked to report on duty at Nagda (MP). The applicant did so but the Assistant Engineer (RE), Nagda, refused to take the applicant on duty. The applicant returned back to respondent No.3 at Kota, who ultimately informed the applicant that his services have been terminated. The applicant approached the higher authority who assured the applicant that according to the seniority list work shall be allotted and the persons shall be engaged but the name of the applicant was not included in the seniority list. The applicant, therefore, submitted representations on 11.2.93, 15.3.93 and 25.5.93. The applicant received the reply in April, 1993 and eventually received the reply dated 28.9.93 (Annexure A/1), by which it was stated that the name of the applicant cannot be included in the seniority list. Therefore, feeling aggrieved with the order of verbal termination and the order passed, at Annexure A/1, the applicant filed this OA praying for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant is not entitled to regularisation and absorption. It is also stated that the applicant did not complete the

service of 240 days from July, 1992 to June, 1993, hence his name was not included in the seniority list. It is also stated that the applicant was never asked to go to another project at Ujjain or Nagda and he never complained of his discontinuance or payment of compensation. It is stated that although in some of the decisions Hon'ble Courts have directed the respondents to prepare the seniority list of casual labourers but as per the instructions issued name of the applicant could not be included in the seniority list and the applicant was informed vide order at Annexure A/1 accordingly. Therefore, the applicant has no case for interference by this Tribunal and this OA is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. Communication, at Annexure A/1, reveals that applicant's name was not included in the seniority list as he did not complete the service of 240 days between July, 1992 to June, 1993. This reply appears to have been given to the applicant as per the instructions issued by the department for this purpose.

6. The learned counsel for the applicant has argued that while disengaging the casual labourers principle of "last come first go" should have been made applicable. In support of his contention he has referred Ghaziabad Development Authority & Ors. v. Shri Vikram Chaudhary & Ors., JT 1995 (5) SC 636.

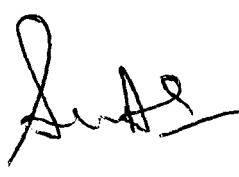
7. We have given anxious consideration to the contentions of the learned counsel for the applicant and also heard the learned counsel for the respondents. It is clear from the

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averments made by the parties that the respondent department issued instructions for preparing the seniority list and the seniority list was accordingly prepared. It is also clear that according to the instructions issued by the Department of Telecommunication, name of the applicant was not included as he did not complete the service of 240 days between July, 1992 to June, 1993 and the certificate produced by the applicant pertains to the period from March, 1986 to July, 1988, which does not support the case of the applicant. Therefore, in our considered view, there was no basis for the respondent department to include the name of the applicant in the seniority list, as communicated by the respondent department vide communication, at Annexure A/1.

8. According to the respondents, the applicant was never retrenched/terminated but he himself has discontinued and tried to seek job in other project. From the reply filed by the respondents it appears that no junior to the applicant was retained in service. It is settled law that casual labour has no right to a particular post. He is neither a temporary or a permanent government servant. Protection available under ^{Article-} ~~Rule-~~ 311 does not apply to him. His tenure is precarious. His continuance is depend upon the satisfaction of the employer and temporary status conferred on him by the scheme only confers him those rights which are spelt out in Clause-5 of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993.

 9. The learned counsel for the applicant has argued that work is still available with the respondents and the applicant is still willing to report on duty if the work is given to him. On the basis of the forgoing, the applicant is not

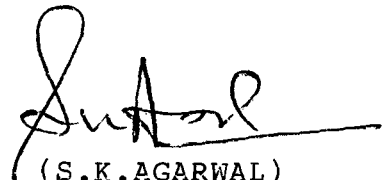
entitled for regularisation and absorption at any Group-D post or on the post of Typist. However, in the circumstances, it will be just and equitable to give preference to the applicant in the matter of engagement on the basis of the experience gained by him. We are, therefore, of the view that while engaging the casual labourers the respondents must give preference to the applicant on the basis of his work done for 865 days between March, 1986 to July, 1988.

10. We, therefore, dispose of this OA and direct the respondents to give preference to the applicant at the time of engaging casual labourers on the basis of his past experience, if the work is available, and accommodate him to work on any project within the State or nearby State within a period of three months from the date of receipt of a copy of this order. No order as to costs.



(N.P.NAWANI)

MEMBER (A)



(S.K.AGARWAL)

MEMBER (J)