

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 23.03.2001

OA No.564/1995

Harendra Singh s/o Shri Sada Ram Hudda r/o 14/3, M.E.S.Quarters,
Khatipura, Jaipur, presently working as Casual Labour at Passport
Office, Jaipur

.. Applicant

Versus

1. Union of India through Secretary to the Govt. of India,
Ministry of Foreign and External Affairs, Patials House, New
Delhi.
2. The Chief Passport Officer, Ministry of External Affairs,
Patials House, New Delhi
3. The Passport Officer, Regional Passport Office, B-107 (B),
Lal Kothi, Tonk Road, Jaipur

.. Respondents

Mr. S.P.Sharma, counsel for the applicant

Mr. V.S.Gurjar, counsel for respondents

CORAM:

Hon'ble Mr.S.I.Agarwal, Judicial Member

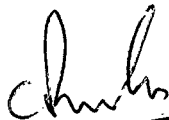
Hon'ble Mr. H.P.Hawani, Administrative Member

Order

Per Hon'ble Mr.H.P.Hawani, Administrative Member

In this OA the applicant seeks the following reliefs:-

- i) by an appropriate order or direction, respondents may be restrained to not to give effect to the termination order or to allow the applicant to continue during the pendency of the Original Application and provide him all consequential benefits connected to the post; and
- ii) respondents may be further directed to regularise the appointment of the applicant in Group-D post in accordance with the directions given by the Central Administrative



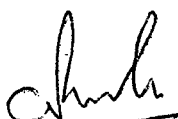
Tribunal, Bench at Jaipur vide Judgment dated 8.5.1995 passed in O.A. No. 83/93.

iii) direct the respondents to count the applicant's period of service from 1.8.90 and the seniority list drawn by the respondents (Annexure F-2) be quashed and set aside and further direct the respondents to prepare a fresh seniority list from the date of initial appointment according to rule 71 of the Industrial Rules.

2. We have heard the learned counsel for the parties at length on two days and have perused all the material on record.

3. It appears that the main grievance of the applicant is with regard to his dis-engagement ordered vide the impugned notice dated 15.11.1995 (Ann.A1) which he wants to be quashed and consequently allow him to continue working and regularise the services of the applicant in Group-D post in accordance with the judgment dated 8.5.1995 rendered in OA No.83 of 1993. The applicant further seeks a direction that his services be counted from 1.8.1990 and accordingly a fresh seniority list be prepared on that basis by quashing the seniority list, copy annexed at Ann.R2. The main burden of the arguments of the learned counsel for the applicant was that the services of the applicant shall be counted w.e.f. 1.8.1990 (and not 1.8.1992 as shown in Ann.R2) and once this is granted, the modified seniority should result in grant of temporary status and regularisation of the applicant. Thus, in our considered opinion, the most important issue to be decided is whether the services of the applicant should be counted w.e.f. 1.8.1990 instead of 1.8.1992 as shown in the impugned list at Ann.R2.

4. Before we proceed further, certain facts can be mentioned. The applicant was engaged as a casual labour in the Passport



Office, Jaipur on 1.8.1990. The applicant had not performed duties from 27.6.1992 to 31.7.1992, though the applicant states that he had taken leave during this period in connection with the marriage of his sister, while respondents state that no intimation regarding his inability to perform duties was given by the applicant. It appears that the applicant was re-engaged on 1.8.1992 and accordingly his name has been shown at Sl.No.25 in the seniority list of casual labourers (Ann.B2) with date of joining as 1.8.1992.

5. It has been strongly argued by the learned counsel for the respondents that since the applicant was aggrieved by this particular seniority list, which also bears his signatures dated 23.12.1993, his grievance had actually arisen at least on 23.12.1993 and as per the provisions of the Administrative Tribunals Act, he should have filed the OA within one year i.e. by 23.12.94 but the OA has been filed on 5.12.95. Thus the OA is hopelessly barred by limitation and as per the well settled law, the OA should be dismissed on this count alone. We find substantial force in this contention but would like to examine the OA on merits in view of the other prayers, including the prayer for regularisation.

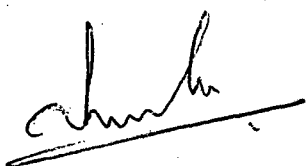
6. We have carefully considered the plea of the applicant that he was on leave between 27.6.92 and 31.7.92 and, therefore, his services be taken as continuous from his first engagement on 1.8.1990. Notwithstanding the strenuous pleadings of the learned counsel for the applicant, we are not able to accept such contention for a variety of reasons. First and foremost, it has to be realised that a Casual Labourer cannot be put on the same pedestal as a Government servant holding a civil post and is, therefore, not entitled to any leave etc. as is available to a Government servant. Of course, on getting Temporary Status, a

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Casual Labourer gets certain benefits but in the present case, the applicant was not a Temporary Status holder at the relevant time. Further, the applicant has not been able to establish that he had even informed his employer about the need for his having to absent himself from work. On the other hand, the learned counsel for the respondents has stated at Bar that no leave application from the applicant is on record. In view of this and the inordinate delay in filing this CA as mentioned in Paragraph No.5 ante, we find no justification for interfering with the seniority list at Ann.P2 and the prayer of the applicant for continuity of his engagement as Casual Labourer w.e.f. his first engagement i.e. 1.8.90 has to be rejected.

7. In view of our finding in the preceding paragraph, it follows that if the respondents had to dis-engage certain Casual Labourers due to lack of vacancies or lack of work load on the basis of most juniors being dis-engaged first, no exception can be taken to the action of the respondents and we accordingly find no reasons to interfere with the impugned Notice for Dis-engagement dated 15.11.1995 (Ann.A1).

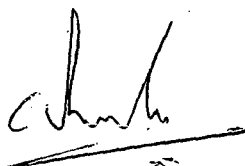
8. The learned counsel for the respondents has also drawn our attention to the decline in the work load as indicated by the table annexed to the reply of the respondents. It is observed that while the Passport Office, Jaipur received more than one lakh applications in 1991 and 1992, the figures came down to 67,030, 64,316 and 49,934 during 1993, 1994 and 1995 (upto 8.12.95). Similarly, the number of passports issued were more than one lakh during 1992 and 1993 but came down to 65,127 in 1994 and 49,174 in 1995 (upto 8.12.95). It has to be appreciated that if on account of a sudden and short-term increase of workload, a public utility organisation like Passport Office has to engage certain Casual

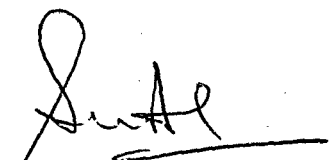


Labourers, it does not mean that such additional work force of the Casual Labourers will have to be continued even after the additional work load is over. Of course, if the additional work load is of a continuous nature, the Government as a model employer with certain social obligations, is required to regularise the services of the Casual Labourers engaged on such work and it is precisely for this purpose that the Ministry of Personnel etc., Govt. of India has framed, consequent to certain judicial verdicts, a scheme for grant of Temporary Status and subsequent regularisation in Group 'D' posts but such regularisation will be subject to eligibility and availability of vacancies. In the instant case, the applicant has been dis-engaged and the impugned notice Ann.A1 itself states that "As the specific work for which you were engaged has since been completed, your services will not be required...". Further the respondents has clearly stated that the services of only the juniormost have been dis-engaged and, therefore, the matter does not warrant our interference.

In this connection we find that this very Bench of the Tribunal vide their order/judgment dated 21.5.93 in OA No.288 of 1993 filed by similarly placed persons has, inter-alia held that, "In case, no sanction is received for continuation of the posts or the work load is reduced, then naturally the persons so appointed will have to go on the basis of the doctrine 'last come first go'. Further, Hon'ble the Supreme Court in the case of Union of India v. Uma Maheswari and ors., (1997) 11 SCC 228 has also held that claim for regularisation of daily wagers is not sustainable, if no regular work is available.

9. In view of the above discussions, the Original Application does not succeed and is accordingly dismissed with no order as to costs.


(N.F. NAWANI)
Adm. Member


(S.K. AGARWAL)
Judl. Member