

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 25/5/2007

OA No. 441/1997

Vijay Kumar Chandel s/o Shri Badri Lal Chandel r/o Kota working as Class-IV employee in the office of Income Tax Officer, Baran.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Income Tax, New Delhi.
2. The Commissioner, Income Tax, Central Revenue Building, Jaipur
3. Assistant Income Tax Commissioner (Adm.), Statue Circle, Jaipur
4. Income Tax Officer, Baran (Raj.)

.. Respondents

Mr. Suresh Kashyap, counsel for the applicant

Mr. N.K.Jain, counsel for the respondents

CORAM:

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

ORDER

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

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set-aside termination of the services of the applicant with back wages and to direct the respondents to regularise the services of the applicant on the post of Class-IV employee.

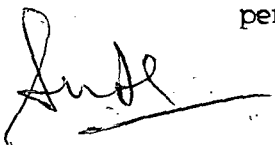
2. The case of the applicant, as stated by the applicant, is that applicant was appointed in the office of Assistant Commissioner of Income Tax, Kota in September, 1993 on daily wage basis and worked upto 1.12.96. Thereafter he was transferred to the

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office of Income Tax officer, Baran. Since then he was working on the post of Chowkidar there, but from 11.8.97 the services of the applicant were dispensed with illegally and in violation of Article 14 and 16 of the Constitution of India. It is stated that applicant is fully qualified for the Class-IV post and he was also called for interview for the post of Chowkidar in Income Tax Department in pursuance of advertisement dated 29.11.1996, but the applicant was not given appointment whereas his services were terminated illegally, arbitrarily and in violation of principles of natural justice. Therefore, applicant filed this OA for the reliefs as above.

3. Reply was filed. It is stated in the reply that applicant was never appointed as Group 'D' employee in the Income Tax Department, but whenever contingency arose the applicant was engaged on daily wage basis and was paid his remuneration out of contingency. As there was no work between February, 97 to July, 97, hence applicant was not allowed to work during this period. It was admitted that in pursuance of advertisement dated 29.11.1996, the applicant was called for interview alongwith others and his candidature was considered but he was not found suitable. It is stated that applicant was never appointed on any post. Therefore, the question of his termination does not arise. The applicant was engaged to work on daily wage basis whenever there was contingency and he was paid his remuneration for the work done, but applicant never worked on the post of Class-IV employee. Therefore, applicant has no case for reinstatement/re-engagement/regularisation and applicant is not entitled to any relief sought for.

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

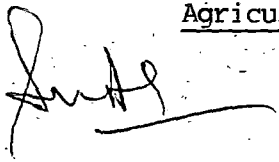


5. Admittedly, the applicant was engaged on daily wage basis to serve as Waterman and he was paid at the rate of Rs. 32 per day for the days he worked on contingent basis. The applicant was not conferred temporary status and he never claimed for the same. There is a scheme called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993, but the case of the applicant is not covered under this scheme for conferring temporary status and regularisation.

6. It is settled law that casual labour has no right to a particular post. He is neither a temporary government servant nor a permanent government servant. Protection available under Article 311 of the Constitution does not apply to him. His tenure is precarious and depends upon satisfaction of the employer. Temporary status conferred on him by the scheme only confers those rights to him which are spelt out in Clause-5 of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993.

7. From time to time Hon'ble the Supreme Court has been observing that persons appointed de-hors the rules cannot be allowed to claim regularisation as this may encourage back door entry. Moreover, regularisation can be done only on availability of post. Merely that a person working since long is no ground for regularisation. In the instant case the applicant was called for interview for the selection on the post of Chowkidar does not entitle him for regularisation as the applicant was never appointed on Group 'D' post. Therefore, termination of his services do not arise and applicant is not entitled to any relief sought for.

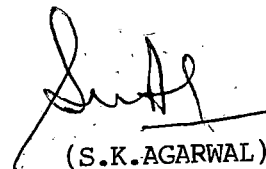
8. In Mukesh Bhai Chhota Bhai Patel Bombay v. Joint Agricultural and Marketing Adviser, Govt. of India and ors., AIR 1995



SC 413, the applicant continued to work on daily wage basis and there is no regular Group 'D' post against which they could be absorbed and no junior to them have been picked up ignoring the claims of superiors. The applicants were dis-engaged because the project against which they were engaged is over. In such a situation Court/Tribunal can not give any direction for regularisation against existing vacancies otherwise the judicial process will be another mode of recruitments. This view also gets support in the case of State of Himachal Pradesh vs. Suresh Kumar Verma and ors., JT 1996 (2) SC-455.

9. In view of the aforesaid settled legal position and facts and circumstances of this case, I am of the considered view that applicant has no case for reinstatement/re-engagement/regularisation and he is not entitled to any relief sought for. Therefore, this OA is devoid of any merit and is liable to be dismissed.

10. I, therefore, dismiss this OA having no merits with no order as to costs.



(S.K.AGARWAL)

Judl.Member