

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 30/2000
T.A. No.

X199XX

DATE OF DECISION 28.8.02

Mangla Ram

Petitioner

Mr. P.N. Jatti

Advocate for the Petitioner (s)

Versus

U.N.I. and three others

Respondents

Mr. Arun Chaturvedi

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Agree
Gopal Singh
32/8
Mr. Gopal Singh
Hon'ble Member (A)

Maying see
G.L. Gupta
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

Original Application No. 30/2000

Mangla Ram
S/o Shri Mool Chand
Gardner cum Group 'D'
O/o the Chief Post Master
General, Rajasthan Circle
Jaipur- 7

: Applicant.

rep. by Mr. P.N. Jatti : Counsel for the applicant.

-versus-

1. Union of India through
the Secretary to the
Government of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur- 7
3. Senior Supdt. of Post Offices,
Jaipur City Division
Jaipur.
4. Senior Post Master,
Jaipur General Post
Office, Jaipur.

: Respondents.

rep. by Mr. Arun Chaturvedi : Counsel for the respondents.

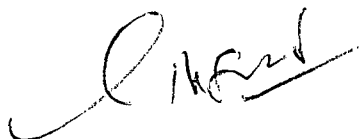
CORAM: The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member.

Date of the
order 28-8-02

Per Mr. Justice G.L. Gupta,

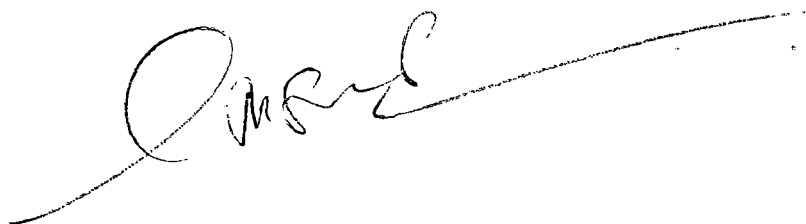
ORDER

Applicant Mangla Ram, had filed O.A. No. 209/97
seeking directions to the respondents to grant him temporary



status from 29.11.89. In the said O.A. it was averred by him that he had been continuously working on the post of Gardener in the office of the 2nd respondent since 1986-87. It was further averred that similarly situated persons had been granted temporary status in terms of the Scheme dated 12.4.91. Reply was filed in the said O.A. Respondents' case was that the applicant was never appointed on full time basis and he was engaged only as a part-time Gardener from 1.7.86. The said O.A was disposed of vide order dated 10.11.97 whereby the respondents were directed to consider and dispose of the representation of the applicant within a period of two months from the date of receipt of communication of that order. Thereafter, the respondents passed an order dated 11.3.98, rejecting the representation of the applicant. Hence this O.A.

2. It is averred that instead of conferring temporary status on the applicant the services of the applicant have been terminated vide order dated 11.3.98. It is stated that the applicant was laid off with effect from 11.9.97, but this fact was not stated in the reply filed by the respondents in O.A. No. 209/97. It is further averred that the services of the applicant have been terminated without any reason in spite of the fact that he had been working continuously since 1986 and he had worked for more than 240 days in a year. It is also averred that the applicant made a representation against the order dated 11.3.98, but the same has not been accepted. It is prayed that the order dated 11.3.98 (Annex. A.1) be quashed and the applicant be allowed to perform his duties with all consequential



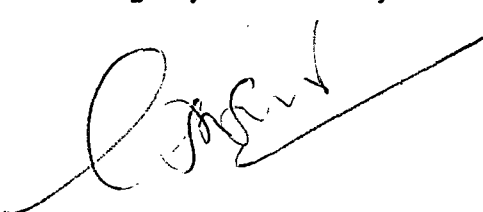
benefits. It is further prayed that temporary status be conferred on the applicant with effect from 29.11.89 in terms of the Director General, Posts, New Delhi letter dated 12.4.91.

3. In the reply, the respondents' case is that the applicant was engaged as contingent employee on work load basis which was hardly for two hours per day and he is no longer in employment from 11.9.97. It is further averred that there is a regular gardener in the office of the 2nd respondent and therefore, there is no justification for keeping the applicant on rolls. It is also averred that the applicant being a casual employee on daily wages basis, did not hold civil post and therefore he cannot seek remedy under the Administrative Tribunals Act, 1985.

4. In the rejoinder, the applicant has denied the facts stated in the reply.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

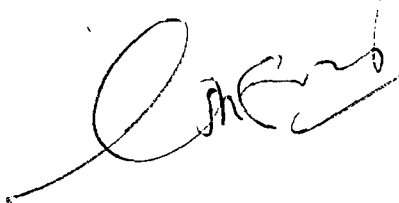
6. Mr. P.N. Jatti, learned counsel for the applicant pointing out that the applicant's O.A. No. 209/97, had been disposed of by directing the respondents to consider and dispose of the representation filed by the applicant regarding the grant of temporary status, but the respondents, instead of deciding the said representation on merits, have terminated the services of the applicant with retrospective effect, contended that the order is illegal, arbitrary and unsustainable. He pointed out



that the fact that the services of the applicant were no longer required, was not averred in the reply filed by the respondents in O.A. No. 209/97, in November 1997, whereas the applicant's services have been terminated with effect from 11.9.97. According to him, the respondents have committed grave illegality in terminating the services of the applicant when the Tribunal was seized of the matter on 11.9.97 by way of O.A. No. 209/97.

7. Mr. Chaturvedi, learned counsel for the respondents, tried to justify the order dated 11.3.98 contending that there was no work available for the applicant and the applicant was working as a contingent staff only.


8. We have given the matter our thoughtful consideration. It is obvious from the pleadings that on 11.9.97 (the date of termination of services) O.A. No. 209/97 filed by the applicant was pending before this Tribunal. It is noticed that the reply in O.A. No. 209/97 was filed by the respondent in November 1997. During the course of arguments it was not controverted by the learned counsel for the respondents that in the said reply it was not stated that the services of the applicant as Gardener were no longer required and therefore he was laid off from September 1997. It is rather surprising that the respondents chose to terminate the services of the applicant with retrospective effect from 11.9.97, vide order dated 11.3.98, without informing this court which was seized of the matter.



9. The order dated 11.3.98, was passed pursuant to the directions of this Tribunal in O.A. No. 209/97. That means the respondents were required to dispose of the representation of the applicant, dated 25.1.96 on merits. Instead of deciding the representation on merits, the respondents have terminated the services of the applicant with retrospective effect from 11.9.97. In our view, the order is wholly illegal and not sustainable. The effect of the order dated 11.3.98 is to negative the effect of the order of this Tribunal dated 10.11.97 in O.A. No. 209/97, which is very much reprehensible.

10. It is significant to point out that in the order dated 11.3.98, the representation of the applicant dated 25.1.96 has not at all been considered. What has been stated in the impugned order is that the applicant has already been laid off from 11.9.97 and he did not continue to be a gardener employed in the department. It tantamounts to doing an illegal act and then justify the same on the non existing grounds.

11. It has been stated at para 3 of the order dated 11.3.98, that the applicant was not employed currently, hence the scheme dated 12.4.91 is not attracted. The same fact has been stated at para 5 of the impugned order. At para 6 of the impugned order dated 11.3.98, it is stated that the applicant was no longer in employment with the department as there is no work available to him and therefore his case for grant of temporary status cannot be considered.



It is evident that the representation of the applicant has been rejected only on the ground that he was not in employment as on 11.3.98. As already stated the applicant was not in employment because of the illegal order of the respondents which was made effective from the date on which the O.A. No. 209/97 was pending.

12. Be that as it may, even on the ground that the applicant was not in employment as on 11.3.98, the representation could not be dismissed while considering the case under the Scheme dated 12.4.91.

In the scheme dated 12.4.91, it has been provided as under:

"

1) 'Temporary status' would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year, during the year, they must have been engaged for a period of 240 days (206 days in the case of offices observing five day's weeks.)

2) Such casual workers engaged for full working hours viz. 8 hours including $\frac{1}{2}$ hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group 'D' official including DA, HRA & CCA.

3) X X X

4) X X X

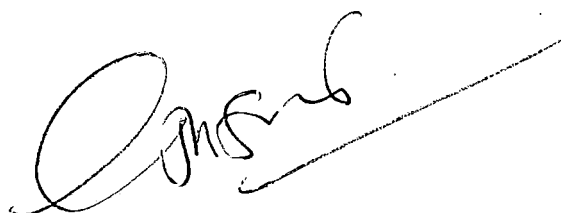
5) X X X

6) X X X

7) X X X

8) X X X

9) X X X



10) X X X

11) X X X

12) X X X

13) X X X

14) X X X

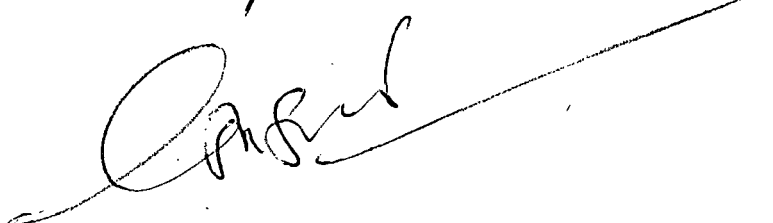
15) X X X

16. The conferment of temporary status has no relation to availability of sanctioned regular Group 'D' posts.

17. No recruitment from open market for Group 'D' posts except compassionate appointments will be done till casual labourers with the requisite qualification are available to fill up the posts in question.

13. A reading of the Scheme goes to show that a casual labourer was entitled to the conferment of the temporary status, if he was in employment as on 29.11.89 and continued to be employed on 12.4.91, provided that he had rendered continuous service of at least one year. The words " currently employed " at para 1 of the Scheme envisage that casual labourer seeking conferment of temporary status must be on job as on 12.4.91.

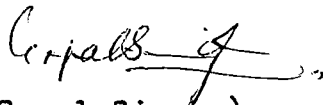
14. It is not disputed that the applicant was in employment as on 29.11.89 and he was also in employment as on 12.4.91. There also does not seem to be any controversy that the applicant had rendered continuous service of one year in 1991 itself. It is further an admitted fact that the applicant has been paid salary at the minimum of the pay scale meant for Group 'D' employees. Not only that he has been paid bonus also. There is also

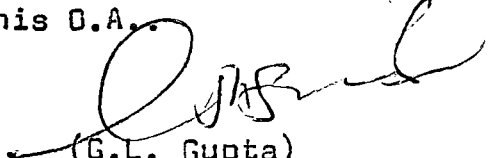


no controversy that the applicant was in employment of the respondents till 1997. During the course of arguments it was not disputed that in O.A. No. 289/97, it was ~~not~~^h the case for the applicant that he was in employment of the respondents continuously from 1987 to 1997 which fact was not denied.

15. In view of the admitted facts of the case, it was the duty of the respondents to grant temporary status to the applicant in the light of the Scheme dated 12.4.91. It was not done. Instead the respondents have adopted wrong course when they rejected the claim of the applicant on the ground that he was no more in employment. Having considered the entire material on record, we are of the definite view that the order dated 11.3.98 is not sustainable.

16. Consequently, the order dated 11.3.98 is hereby quashed. The respondents are directed to re-consider and dispose of the representation of the applicant dated 25.1.96, in the light of the observations made above, within a period of two months from the date of communication of this order. The applicant shall be deemed to be in service even after 11.9.97. He shall get Rs.1000/- as costs of this O.A.


(Gopal Singh)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.