

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR, this the 16th day of February, 2005

ORIGINAL APPLICATION No. 482/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Madan Lal Mali
s/o Shri Ram Swarup Mali,
aged about 43 years,
r/o Village and Post - Chandsen,
Tehsil Malpura,
Tonk.

.. Applicant

(By Advocate: Shri Shiv Kumar)

Versus


1. Union of India through
The Secretary,
Indian Council of Agricultural
Research, Ministry of Agriculture,
Government of India,
Krishi Bhawan, New Delhi
2. Director, Central Sheep and
Wool Research Institute,
Avika Nagar,
Distt. Tonk.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

The applicant has filed this Original Application
thereby praying for the following reliefs:-



"(i) That the respondents may be directed to take the applicant on duty forthwith and further the respondents may be directed to regularize the service of applicant after giving him Temporary Status from a date when he attained the same i.e. latest on or after 07.06.1988 with all consequential benefits.

ii) Any other order/direction/reliefs may be passed in favour of applicant which may be deemed fit, just and proper under the facts and circumstances of this case.

iii) That the cost of this application may be awarded."

2. Briefly stated, the applicant was engaged on daily wage basis by the respondents in view of the research activity taken up in different projects by the institute. According to the applicant, he was appointed on daily wage basis in Central Sheep and Wool Research Institute, Avikanagar in the year 1972-73, though in the representation dated 28.5.1990 (Ann.A2), the applicant has stated that he has worked in the institute w.e.f. 1977 till 1989. The grievance of the applicant in this case is two fold viz.- (i) that the respondents be directed to take the applicant on duty forthwith and his services may be regularized w.e.f. 7.6.88 and also (ii) that he be granted temporary status in terms of OM dated 10.9.1993 (Ann.A1). The applicant in para 3 of the OA has specifically stated that the application is within limitation as prescribed under Section 21 of the Administrative Tribunals Act (AT Act), 1985.

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3. The respondents in their reply have taken objection of limitation and it has been stated that the present applicant is seeking relief w.e.f. 1988, as such the present applicant is not maintainable in view of the jurisdiction conferred by the Administrative Tribunals Act, 1985. It is further stated that the applicant is also not entitled to grant of Temporary Status in terms of scheme of Grant of Temporary Status and Regularisation to the casual labour as contained in Department of Personnel and Training OM dated 10.9.93, which is one time affair and was applicable in respect of those casual employees who were in service on the date of notification of the scheme and has rendered one year of continuous service which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). Since the applicant did not fulfill the criteria of having put in requisite number of 240 days continuous service as on 10.9.93, therefore, the action of the respondents is perfectly legal, valid and in consonance with the scheme of Grant of Temporary Status and Regularization of the casual workers. On merits, it has been stated that the applicant has not detailed out in which year he had worked for more than 240 days or more, as such he is not entitled for regularization. In fact, the applicant was engaged for a specific work in view of the research work of the

institute of the answering respondent No.2. The engagement of the applicant ended with the expiry of the specific period, which was stipulated at the time of his engagement. Therefore, on that count as well the applicant has no cause of action in his favour and the Original Application merits rejection.

4. The applicant was given number of opportunities to file rejoinder, but no rejoinder has been filed.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 There is substance in the submission made by the learned counsel for the respondents that the application is time barred and this Original Application cannot be entertained in view of the provisions contained in Section 21 of the AT Act, 1985. Further, there is also substance in the submission of the respondents that the applicant is also not entitled to grant of temporary status in terms of the scheme of the Department of Personnel and Training, Govt. of India dated 10.9.1993. The matters on these points are no longer res-integra and has been settled by the Apex Court in number of decisions. At this juncture, it would be relevant to extract Section 20 and 21 of the Administrative Tribunals Act, 1985 which reads as follows:-

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"20 Application not to be admitted unless other remedies exhausted.

- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available under the relevant service rules as to redressal of grievances.
- (2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievance,
 - (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purpose of sub-section (1) and (2) any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

"21. Limitation-

- (1) A Tribunal shall not admit an application -
 - (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
 - (b) In a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and a period of six months has expired thereafter without such final order having been made, within one year from the

date of expiry of the said period of six months.

- (2) Notwithstanding anything contained in sub-section (1), where- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates and
(b) the proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had made sufficient cause for not making the application within such period."

5.2 Admittedly, the applicant is seeking regularization w.e.f. 1988. The applicant has not moved any application for condonation of delay in terms of Section 21(3) of the Administrative Tribunals Act, 1985. Thus, in view of the law laid down by the Apex Court in the case of Ramesh Chand Sharma Vs. Udham Singh, Kamal, (1999) 8 SCC 304, such application could not be admitted and disposed of on merits in terms of the provisions contained in Section 21 (1) (a)

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of the AT Act. Further, the Apex Court in the case of State of Karnataka vs. S.M.Kotrayya, (1996) 6 SCC 267 has held as under:-

"We hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-section (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

5.3 At already stated above, the applicant has not given any explanation as required under Section 21 of the Administrative Tribunals Act and as interpreted by the Apex Court in the case of S.M.Kotrayya (supra). Rather, the applicant has not filed any application at all for condonation of delay in terms of Section 21(3) of the AT Act. There is no explanation as to how the present application is within limitation. Thus, I am of the view that since the applicant did not approach this Tribunal within the period of limitation provided

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by the statute, as such no relief can be granted to him in term of the law laid down by the Apex Court as notices in earlier part of the judgment.

5.4 Further, the applicant is also not entitled to grant of temporary status in terms of the scheme of 1993 as the clause 4 of the scheme is very clear that the conferment of temporary status is to be given to casual labours who were in employment as on the date of commencement of the scheme and such casual labour has completed 240 days of work in a year or 206 days (in case of offices observing 5 days week). None ^{of the} ~~the~~ condition is attracted in the instant case as there is nothing on record to suggest that the applicant has worked at least for 240 days or 206 days prior to the date when the said scheme came into effect i.e. 1.9.93 and also that he was in employment on the date of commencement of the scheme. The Apex Court in the case of Union of India and ors. vs. Mohan Pal, 2002 (3) SUPREME 602, has held that the scheme of 1993 is not an ongoing scheme. In order to acquire temporary status, casual labour should have been in employment as on the date of commencement of the scheme and he should have also rendered continuous service of at least one year which means that he should have engaged for at least 240 days in a year or 206 days (in case of offices observing 205 days a week). Thus, in view of the law laid down by the Apex Court in the case of

Mohan Pal (supra), the applicant is also not entitled to grant of temporary status.

6. For the foregoing reasons, the OA is bereft of merit and is accordingly dismissed with no order as to costs.



(M.L. CHAUHAN)

Member (J)