

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP : INDORE

Original Application No. 83 of 2003

Indore, this the 6th day of January, 2005

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan-Judicial Member

Poonamchand s/o Shri Shivprasad,
aged 31 years, Casual Cook, The Infantry
School, Mhow, r/o 3143, Chota Teli Mohalla,
Near Mohan Talkies, Mhow - Applicant

(By Advocate - Shri D.M.Kulkarni)

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Directorate General of Military
Training (MT-7), General Staff Branch,
Army Headquarters, New Delhi.
3. Directorate General of Infantry(Infantry-4),
Army Headquarters, New Delhi.
4. The Commandant, Infantry School, Mhow.
5. Shri Uttam Singh, Cook, The Infantry
School, Mhow

- Respondents

(By Advocate - Shri Umesh Gajankush)

ORDER (Oral)

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
has claimed the following main reliefs-

"8.1 Respondent No.4 may please be directed to
absorb the applicant to the regular post of
Cook(for trainees) with effect from 02 March 1998
that is the date from which Shri Uttam Singh who
was one year junior to the applicant has been
absorbed as regular Cook (for trainees).
8.2 Orders for grant of Annual Increments with
effect from 01 March 1999, may be passed.
8.3 After fixation of pay, the orders regarding
grant of arrears to the applicant may be passed.".

2. The brief facts of the case are that the applicant
was appointed as casual cook (for trainees) by respondent
no.4 through Employment Exchange, on 1.10.1994. He was
retained in service till 31st March, 2001. His services

 have been orally terminated with effect from 1.4.2001.

According to the applicant, he has been working regularly during the period from 1.10.1994 to 31.3.2001 except once when he was given a break of two months during Kargil war in the year 2000. After completion of three years service, the applicant had requested the department for absorption and he was assured by the authorities that he will be absorbed on release of vacancies. When the vacancies were released, the respondent no.4 instead of regularising his services as per his seniority as casual cook, conducted a formal test considering the four casual cooks i.e. the applicant and other three persons, namely, Bal Bahadur, Vijay Singh and Uttam Singh. Out of 4 persons considered, except the applicant other three have been given regular appointment. The applicant has further submitted that when certain vacancies were further released, the respondent no.4 had decided to reserve all the posts for ST & general category only. The main contention of the applicant is that one Uttam Singh, private respondent no.5, belonging to general category and was also appointed as Cook on casual basis after one year of the appointment of the applicant, has been regularised, whereas the applicant ^{has} not been regularised. Hence, he filed an O.A. No. 602/2001. The Tribunal vide its order dated 4.9.2002 had directed the respondent no.4 to consider and dispose of the representation of the applicant by a speaking order. The respondents vide order dated 28.12.2002 (Annexure-A-13) have rejected the representation of the applicant. Hence, this OA.

3. The respondents in their reply have stated that as per the Scheme issued by the Govt. of India called as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, of Government of India, 1993, temporary status will be conferred on all casual labourers who were in employment on 1.9.1993 and have rendered a continuous service of at least one year 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). The applicant was appointed as casual

cook (for trainees) w.e.f. 1.10.1994 against the short term vacancy. His appointment was purely on casual/temporary basis. During the year 1996, three vacancies of Cooks were released by Army Headquarters and none of these vacancies was reserved for reserved category candidates. Accordingly, the vacancies were notified to the Employment Exchange. With a view to give priority to the casual employees working on daily wages, a few applications were received, that in the school. On the basis of eligibility criteria, the persons were considered for selection. The applicant had also participated in the selection and as per merit he secured fourth position in the selection. Since there were three vacancies, the applicant could not be appointed. Hence, this OA has no merit and is liable to be dismissed.

4. The learned counsel for the applicant has stated that the applicant was appointed in the year 1994 whereas the private-respondent Shri Uttam Singh was appointed one year later. Though the private-respondent Shri Uttam Singh, who was junior to the applicant, has been absorbed, the applicant being senior to him has been left out and instead of absorbing him, his services have been dispensed with. The learned counsel has, therefore, submitted that a direction be given to respondent no.4 to absorb the applicant from the date private-respondent no.5 has been absorbed.

5. On the other hand, the learned counsel for the respondents has stated that the applicant cannot be considered for grant of temporary status/regularisation under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 (hereinafter referred to as 'the Scheme of 1993') as he has been appointed in the year 1994. The scheme of 1993 was only a one time measure and is not an on-going scheme. The applicant has been considered in the year 1998 for absorption along with private-respondent no.5. The selection committee has found the private-respondent no.5 as fit for absorption and ranked

him at serial no.3 whereas the applicant was ranked at serial no.4 in the panel. Since there were only three vacancies, three persons were absorbed and the applicant, who ranked at serial no.4 in the merit list, could not be absorbed.

6. We have given careful consideration to the arguments advanced on behalf of both the sides. We find that this Tribunal cannot give a direction to the official respondents for grant of temporary status/regularisation of the applicant under the scheme of 1993 as the Hon'ble Supreme Court in the case of Union of India Vs. Mohan Pal, (2002)4 SCC 573 has held that the scheme of 1993 was a ^{measured} one time programme applicable to casual labourers who were in employment on the date of scheme and had also rendered continuous service for the prescribed period. It does not postulate giving temporary status to all casual workers as and when they complete required continuous service. It is also a well established legal position that powers to make selection are vested with the Selection Committee under the relevant rules and the Tribunal cannot play the role which the selection committee has to play (see UPSC Vs. Hiranyalal Dev, AIR 1988 SC 1069). Therefore, no direction can be given for appointment of the applicant on the basis of the merit list prepared by the selection committee during the year 1998. Since the applicant has already worked under the respondents for about 7 years, the only direction which can be given is that in future as and when vacancies arise, the respondents should consider the applicant for appointment in preference to juniors and freshers.

7. In the result, we direct the official-respondents to consider the applicant for absorption, in preference to juniors and freshers against the future vacancies as and when they arise, in accordance with rules and law. While considering him the period of service rendered by him on daily wages will be

[Signature]

excluded from his age. With these directions, the O.A. is disposed of. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

पृष्ठांकन रंग और/व्यापारी..... जबलपुर, दि.....
प्रक्रिया अवधि तिताः—

प्रतिलिपि अबो धितः—

(1) सचिव, उत्तर बंगाल राज्य विधान एसेटेजिट्टेशन, जबलपुर
 (2) आखेदवार श्री/ श्रीमती/ श्री/ के काउंसिल
 (3) प्रधार्यी श्री/ श्रीमती/ श्री/ के काउंसिल
 (4) यंत्रपाल, योग्यता, जबलपुर न्यायपीठ
 सभाला एवं आवश्यक कार्यदाती हेतु

Mr. Keckers
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