

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.48/2006.

Jaipur, this the 25th day of May, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Nawal Singh
S/o Late Shri Chogati
Aged about 38 years,
R/o 752/1 Narsinghpura, Beawar.

... Applicant.

By Advocate : Shri P. N. Jatti.

Vs.

1. Union of India
Through the Secretary to the Govt. of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Chief Commissioner of Income Tax
Cadre Controlling-NCR Building,
Bhagwan Das Road,
Statue Circle,
Jaipur.
3. The Commissioner Income Tax,
Near Bus stand,
Ajmer.
4. The Income Tax Officer,
Court Compound,
Near Bus Stand,
Beawar,

... Respondents

By Advocate : Shri Gaurav Jain.

: O R D E R :

Per M. L. Chauhan.

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

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"8.1 That by a suitable writ/order or the direction the respondents be directed.

(a) to regularize the services of the applicant as Group 'D' Peon, Chowkidhar etc.

(b) That as the humble applicant is contingent paid casual labour, therefore, be treated as the other contingent paid and the temporary status be allowed to the applicant with effect from 5th July 1994 with all the consequential benefits like minimum pay of Group D with increment and allowances and the services of the applicant be continued."

2. In sum and substance, the case of the applicant is that he has rendered a long service as Casual Labourer in the Income Tax Department, as such, he should be conferred temporary in terms of Casual labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 and also his services may be regularized in Group-D post.

3. Both these issues were subject mater of dispute in OA No.329/2005, Hari Prasad vs. Union of India and ors., decided by this Tribunal on 23.3.2006 whereby this Tribunal held that Casual Labourers who were engaged on contingency basis after promulgation of the aforesaid scheme of 1993 are not entitled to conferment of temporary status and further it was held that such Casual Labourers are not entitled to regularization of their services in Group-D categories which posts have to be filled up as per provisions contained in the recruitment rules. However, this Tribunal, keeping in view the fact that such contingent Casual Labourers are working with the Department for the last so many years and work is

still available with the Department, limited directions were given to the respondents to continue to engage the applicants, if the work of the nature which the applicant performed is still available with the respondents and also that the case of the applicant for appointment against Group-D category(ies) shall be considered along with other persons by giving relaxation in age for a period of service rendered by him in the capacity as Casual Labourer. In the instant case, though the applicant was engaged as Casual Labourer in July, 1993 i.e. two months prior to promulgation of the 1993 scheme, but the applicant has not worked for at least 240/206 days on the date when the scheme came into effect i.e. on 1.9.1993. As such, the applicant is not entitled to grant of temporary status in terms of 1993 scheme.

3. The reasoning given by this Tribunal vide judgment dated 23.3.2006 in OA No.329/2005 is mutatis-mutandis applicable in the facts and circumstances of this case.

4. Accordingly, the respondents are directed to give the benefit of age relaxation to the applicant to the extent of service rendered by him in the capacity of Casual Labourer. In other words, the services rendered by the applicant as Casual Labourer will be deducted from his maximum age for the purpose of determining eligibility for Group-D post and further the respondents shall continue to engage the applicant if there is

sufficient work and other Casual Labourers are still to be employed by the respondents for carrying out the work.

5. Before parting with the matter, it may be stated that the applicant has moved MA No.53/2006 for interim relief with a direction to the respondents not to disengage the applicant and  allow him to work continuously till the decision of the OA as the applicant was apprehending that after the issuance of notice by this Tribunal the respondents are likely to disengage the service of the applicant. The said MA came for consideration on 10.03.2006 and this Tribunal after noticing the contention of the Learned Counsel for the applicant directed the respondents to maintain status quo qua the applicant till the next date of hearing. Subsequently the respondents file reply to the MA. In the reply, the stand taken by the respondents is that the services of the applicant has been disengaged w.e.f. 1.2.2006. For that purpose, the respondents have annexed copy of the letter dated 17.03.2006 written by Income Tax Officer, Ward-1, Beawar. Learned Counsel for the applicant has seriously disputed the stand taken by the respondents and argued that the services of the applicant has been terminated only after the issuance of the notice by this Tribunal on 10.02.2006. Learned Counsel for the applicant further argued that after the issuance of so called dis-engagement of the applicant, the respondents  have engaged other person(s) in place of the applicant.

Thus, it was not permissible for the respondents to disengage the service of the applicant especially when the work was available with them. Be that as it may, Let Respondent No.2 look into the matter and in case the service of the applicant has been replaced by engaging another casual labour, such action on the part of appropriate authority is arbitrary. It is well settled that ad hoc or temporary employee can be replaced by only regularly selected employee. The applicant is working with the department since 1993 and disengagement of the applicant and re-engaging the fresh casual labour in his place cannot be justified at all.

6. Accordingly, Respondent No.2 will investigate the matter on this point and in case the contention raised by the Learned Counsel for the applicant is found genuine, issue appropriate order to his sub-ordinate to re-engage the applicant in terms of the directions given in earlier part of this judgment. Such exercise shall be undertaken within a period of one month from today.

7. With these observations, the OA is disposed of with no order as to costs.


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./