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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

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**ORDERS OF THE TRIBUNAL**


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14.9.2007

OA 223/2007

Mr. Rajesh Sharma, proxy counsel for  
Mr. Rajveer Sharma, counsel for applicant.

At the request of the learned proxy counsel  
for the applicant, let the matter be listed for  
admission on 27.9.2007.

  
(TARSEM LAL)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)

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27.9.07

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Mr. Rajveer Sharma - Counsel for the applicant

Heard the learned Counsel for the  
applicant.

For the reasons dictated separately,  
the OA is ~~disposed~~ of.

  
(M.L. CHAUHAN)

Judl. Member

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 27th day of September, 2007

ORIGINAL APPLICATION No.223/2007

CORAM:

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

Radhey Shyam,  
s/o late Shri Ramnath,  
aged 49 years,  
r/o Neem Chowki,  
near Sandalaya Sadan,  
Sawaimadhopur City,  
Rajasthan

.. Applicant

(By Advocate: Shri Rajveer Sharma)

Versus

1. Union of India through its Secretary, Ministry of Water Resources, Department of Water Commission, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Executive Engineer, Central Water Commission, Chambal Zone, 84/93-94, Pratap Nagar, Sanganer, Jaipur

.. Respondents

(By Advocate: )

O R D E R (ORAL)

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

- (a) By an appropriate order and direction the respondents may be directed to delete the date of termination from the order of appointment and by an appropriate order the respondents may be directed to pass an order to appoint the applicant on the post of Boatman/Khallasi substantively being

permanent in nature and accordingly the respondents may be directed to regularize his whole service since the date of initial appointment i.e. since 1987 with all consequential benefits.

- (b) By an appropriate order and direction the Annexure-A2 policy/scheme dated 20.6.1997 may be declared as ultra vires and the respondents may be directed to reconsider, modify suitably the scheme for the welfare of the employees, more particularly, by keeping the view in consideration so the applicant may be regularized in service.
- (c) Any other order, relief or direction which this Hon'ble Tribunal may deem fit and proper be also passed in favour of the applicant.
- (d) Cost of the original application may kindly be awarded to the applicant.

2. Briefly stated, facts of the case are that the applicant was engaged as Seasonal Khalasi for a period of 89 days in a year. It is the case of the applicant that he was engaged w.e.f. 16.6.1978 and continuously working with the department since then. The grievance of the applicant is that he was allowed appointment only for 3 months in a year and after this period services of the applicant are being terminated arbitrarily and illegally. It is further averred that he made repeated representations to the authorities to regularize his services. Further grievance of the applicant is that as per the scheme for grant of temporary status and regularization of seasonal khalasis issued by the Government of India vide order No.8/3/95-Estt.I (Ann.A2), temporary status will be conferred on all those Seasonal Khalasis who have rendered minimum 120 days of continuous service. Since the respondents have engaged the applicant only for 3

months, as such, the applicant could not complete 120 days of continuous service in a year. The applicant has prayed that the scheme dated 20.6.1997 be declared ultra vires and respondents be directed to reconsider/modify suitably the scheme.


3. I have heard the learned counsel for the applicant at admission stage. I am of the view that the applicant is not entitled to any relief. The Constitution Bench of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and ors. Vs. Umadevi (3) and Ors., 2006 SCC (L&S) 753 has categorically held that absorption, regularization of or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment is not permissible mode. All appointments has to be made in conformity with the constitutional scheme of public employment. The Hon'ble Apex Court has further held that mere because a temporary employee or casual worker had continued beyond the time of his appointment, he would not be entitled to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following due process of selection as envisaged by the relevant rules. In the present case, the applicant was engaged as Seasonal

Khalasi for 3 months in a year. Admittedly, such appointment is not against a regular post. Absorption or regularization is permissible only where a person has been appointed against sanctioned post in conformity with the recruitment rules and after following due process of selection. This being not a case of this nature, as such, no direction can be given regarding regularization of the applicant.

4. Regarding second prayer of the applicant that direction may be given to the respondents to declare the scheme for grant of temporary status and regularization (Ann.A2) as ultra vires and further direction be given to modify the scheme suitably, the learned counsel for the applicant has drawn my attention to the judgment rendered by this Tribunal in number of cases decided vide common judgment dated 18.10.2001 whereby this Tribunal has held that for the purpose of arriving at total 120 days of service, service rendered in the preceding year as well as subsequent year should be counted instead of 120 days continuous service in an year as stipulated in the scheme and directions were given to the effect that 'to that extent the present scheme will stand modified and the modified provisions also shall taken effect from the Monsoon season of the year 2001.' In the present OA as well as in the cases decided vide common judgment dated 18.10.2001, the respondents are same

and in case this Tribunal has already given direction in the earlier OA which is applicable in this case, it will be a futile exercise to reiterate such directions again, but even then the applicant is not entitled for the relief of regularization in view of the judgment rendered by the Hon'ble Apex Court in the case of Umadevi (supra). Thus, he cannot be held to be entitled for regularization since 1987.

5. With these observations, the OA is disposed of at admission stage.

  
(M.L. CHAUHAN)  
Judl. Member

R/