

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(3)

O.A. No. 449 of 2003

New Delhi this the 20th day of October, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Shri Udalbir
S/o Shri Shankar Lal
R/o Jhuggi No.31/97

Kali Bari Marg,
Gole Market,
New Delhi.

..Applicant

By Advocate: Shri M.L. Chawla.

Versus

1. Union of India through
Secretary,
Ministry of Defence,
Government of India.
 2. Joint Secretary and Chief Administration Officer,
(Training)
Ministry of Defence,
Government of India,
South Block,
New Delhi-110 011.
 3. S.A.O. (Admin)
O/o Controller of Defence Accounts
(CDA) Hqrs. G-Block,
New Delhi.
- ..Respondents

By Advocate: Shri Gyanender Singh, proxy counsel for
Shri Arun Bhardwaj, Counsel.

ORDER

The applicant has filed this OA against orders dated 28.6.2002 and 2.1.2002 Annexure A-1 and A-2. He has further alleged that since his engagement w.e.f. 6.12.1990 with the respondents as part time labourer and thereafter on full time basis w.e.f. 20.6.1996 and he is continuing since then till the filing of the application but despite that the applicant has not been regularised. Therefore, the applicant has made a prayer seeking a direction to the respondents to regularise the service of the applicant from the date his junior has been regularised

with the respondents.

[Signature]

with all consequential benefits.

2. The applicant further alleges that he had filed earlier an OA 635/2001 wherein directions were given to the respondents to consider the claim of applicant for regularisation after conferment of temporary status. However, vide impugned order Annexures A-1 and A-2 temporary status was denied to the applicant as respondents relied upon the judgment given by the Apex Court entitled Union of India Vs. Mange Ram and Others and the Apex Court has also held in the case of Mohan Pal that the scheme of 10.9.1993 was not an on-going scheme and since the regularisation of the applicant was treated as dependent upon grant of temporary status, therefore, the case of the applicant on the basis of denial of temporary status was not approved.

3. The applicant further submitted that assuming that ^{on the basis} temporary status / of scheme of 1993 was not an ongoing scheme but the applicant is otherwise entitled for regularisation under the OM dated 7.6.88 and since the applicant has already put in more than 12 years of service as Safai Karamchari without break so the applicant is entitled to be regularised.

4. The respondents are contesting the OA. The respondents in their reply pleaded that the applicant had filed an OA 635/01 wherein the court had directed the respondents to consider the claim of the applicant for grant of temporary status and to decide the matter expeditiously and in any event within a period of one month from the date of receipt of a copy of this order.

5. It is further submitted that after this judgment given in OA 635/2001 applicant had filed a CP. The respondents contested the CP so the CP was dropped.

6. It is further stated that the applicant being engaged only for casual/seasonal/intermittent ^{job of Safai Karamchari} nature of work on they so

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regularisation of such type of employees was considered in the years 1988, 2001 and 2001. However, applicant could not be selected by the Board of Officers assembled for the purpose in May, 1988, 15.12.2000 and 10.4.2001, Annexures R-3, R-4 and R-5 and the regularisation of the casual labourers is subject to availability of Group 'D' posts, as and when vacancies arise the candidates are considered for regularisation as per the list obtained from the Employment Exchange and as per rules.

7. Respondents further pleaded that since relief had already been granted to the applicant in OA 635/2001 so second OA cannot be filed so the same has to be dismissed on the plea of res judicata.

8. I have heard the learned counsel for the parties and gone through the records of the case.

9. Copy of the OA filed by the applicant earlier has already been placed on record which is at pages 29 to 35 along with the counter-affidavit.

10. So the question arises whether the present OA is barred by the principles of res judicata/constructive res judicata or not. The perusal of the OA filed by the applicant earlier goes to show that in the earlier OA also the applicant had prayed for regularisation of his services that it was based on the scheme of 10.9.93 and the applicant had also prayed that he should be granted temporary status and thereafter he should be considered for regularisation. But the fact remains that when the applicant had sought regularisation on the basis of the scheme then he could have also raised the plea that if scheme of 10.9.93 is not applicable then ^{he} should be considered for regularisation on the ^{basis of the} ~~the~~ scheme of 1988 or any


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other previous scheme. The applicant had omitted to take up that ground in his earlier OA so the present OA is barred by principles of constructive res judicata.

11. Besides that the respondents have also pleaded that before filing the earlier OA the applicant had already been considered thrice for being regularised but the Board of Officers did not select him meaning thereby that the applicant was not found suitable for being regularised. So to my mind the applicant cannot ask again and again for being considered for regularisation and by no stretch of imagination it can be said that when the earlier OA was filed on the basis of scheme of 10.9.92 a fresh cause of action has arisen to the applicant by virtue of the scheme of 1988 or ^{any} other previous scheme when the applicant had earlier filed OA 635/2001. Those schemes were also operative ^{at that time} and the applicant could have very well ^{that he should be extended the benefit of} pleaded those schemes also.

12. Hence to my mind the OA is barred by principles of ^{constructive} res judicata and even otherwise no fresh cause of action when the applicant has already been considered thrice but was not found suitable.

13. In view of the above, OA has no merits and the same be dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)

Rakesh