

OA 872/2003

New Delhi, this the 21st day of April, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Ramesh Chand Meena
F-198, Gali No.10
Saad Nagar-2, Palam Colony
New Delhi.

...Applicant

(By Advocate Sh. M.K.Bhardwaj)

V E R S U S

1. Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Director, Intelligence Bureau
Ministry of Home Affairs
Sardar Patel Marg, Bapu Dham
New Delhi.

...Respondents

(By Advocate Sh. S.M.Arif)

O R D E R

Shri Sarweshwar Jha,

Heard. This OA has been filed against the respondents' order dated 4-3-2003 whereby the representation of the applicant against termination of his service has been rejected by the respondents.

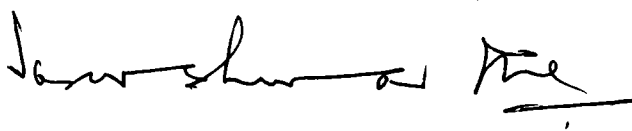
2. The applicant appears to have approached this Tribunal earlier also vide OA No.677/2002 which was disposed of by the Tribunal on 28-1-2003 with directions to the respondents to examine the representation of the applicant as filed by him on 16-5-2001 and to dispose it of by issuing a detailed and speaking order in accordance with law within a period of two months from the date of receipt of a copy of the said order. The respondents disposed of the matter vide their order dated 4-3-2003 (Annexure A-1). In the said order, the respondents have stated that the representation of the applicant has been considered and it has been found that his services have been terminated only after no work is available for him. They have further clarified that the



applicant had been initially engaged purely on the basis of need and not in terms of any Recruitment Rules. They have, therefore, held that the question of seniority being assigned to the applicant vis-a-vis such purely need based engaged part time workers did not arise. They have also said that need based engagement of other part time workers has no relevance with the engagement of the applicant.

3. Coming back to the facts as stated by the applicant, it is observed that the applicant was initially engaged as casual labourer (Safai Karamchari) together with other similarly placed persons vide their order dated 28-8-98. The said engagement was made on part time basis initially for the period from 2-11-98 to 2-9-99 on a monthly remuneration of Rs.2400/-. The applicant has alleged that the words 'part time' have been used by the respondents only to deprive him of getting the benefit of continuous service. The applicant has claimed that he has worked for 8 to 12 hours a day like regular Safai Karamcharis. He has claimed that the work which they had been doing was of perennial nature, so much so that they (the respondents) had to engage more casual labourers for the purpose from 3-6-99. It was only when the applicant was dis-engaged from the service of the respondents that he filed the said OA in the Tribunal and which was disposed of as referred to above on 28-1-2003. Grievance of the applicant, however, continues, as he has submitted that the respondents, despite the orders of the Tribunal to dispose of the matter by passing a reasoned and speaking order, have not given the reasons as to why they have continued the juniors and engaged fresh persons without considering the claim of the applicant.

4. From the details of the facts as submitted by the respondents it is observed that they have treated the applicant as only a part time Safai Karamchari and who has



been given a speaking order vide their order dated 4-3-2003 (the impugned order). They have also confirmed that the applicant was initially employed as a part time Safai Karamchari from 2-11-1998 to 26-5-2000 to meet their need based requirements. It was neither a regular nor temporary nor ad-hoc engagement ; it was purely need based. On the question of dis-engagement of the applicant, they have said that his services have been terminated after no work was available for him. As regards his seniority vis-a-vis other such purely need based engaged part time workers, they have submitted that there was no question of seniority vis-a-vis other such purely need based engaged part time workers. The above mentioned facts have been submitted by the parties over and over again.

5. In the rejoinder also filed by the applicant, he has disputed the claim of the respondents that he was engaged purely as a part time Safai Karamchari from time to time during the period from 2-11-1998 to 26-5-2000 and has asserted that he had worked for 8 to 12 hours a day during the said period.

6. Ld. counsel for the applicant has cited the decisions of this Tribunal in OA No.3077/91 as decided on 14-2-92 in which, among other things, it has been held that a casual labourer is entitled to protection of Articles 14 & 16 of the Constitution of India. There is also a reference to the decisions of the Hon'ble Supreme Court in **Central Welfare Board & Ors. v. Ms. Anjali Bepari & Ors.** SLP (C) No.16906/1996 (CC-3423/96) (JT 1996 (8) SC 1), in which, among other things, it has been held that,

'Therefore, there being no junior, she cannot be regularised. Direction issued to continue respondent in any other temporary scheme. Dispensing of service to be done on last-last come go first basis. She will be taken back or regularised when a regular post is available in accordance with seniority.'



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However, it is observed that the applicant has not mentioned the names of any junior, if any, appointed in preference to the applicant against any regular vacancy or even as a casual labourer. Under these circumstances, it does not appear quite relevant on the part of the applicant to have claimed regularisation of service particularly when the respondents have categorically submitted that he had been engaged from time to time as a part time Safai Karamchari on need based basis and not against any regular post. From their submissions, it is also not revealed that any junior to the applicant or fresher has been engaged by them in preference to the applicant. Moreover, they have reiterated that this arrangement is only to meet part time need of the respondents and not on the basis of need for a casual labourer.

7. From the submissions as made by the ld. counsel for the applicant, it is observed that the ld. counsel has dwelt on the assumption that the applicant had been employed as casual labourer and, therefore, he should have been re-engaged if his juniors had been continued. However, it is observed that the applicant had served the respondents not as a casual labourer but as a part time worker and had been engaged on the basis of their need as and when the same arose. A clear distinction has, therefore, to be made between seeking regularisation as a casual labourer and seeking regularisation as a part time worker. This case has, therefore, to be considered in the light of this distinction. I find, from closer perusal and examination of the facts and circumstances of the case, that the applicant's case is that of seeking regularization of a part time worker and further that he has failed to establish that any junior to him or any fresher has been engaged/regularized by the respondents.

8. Having thus regard to the facts and circumstances



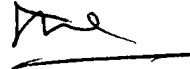
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of the case and having heard the ld. counsel for the parties, I do not find any merit in the case of the applicant and, therefore, the same is dismissed.



(Sarweshwar Jha)
Member (A)



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