

Central Administrative Tribunal
Principal Bench

OA No. 1456/2003

New Delhi this the 14th day of October, 2003.

Hon'ble Mr. Shanker Raju, Member (Jud1)

Sh. O. P. Tiwari,
S/o late Sh. Ganga Prasad Tiwari,
R/o RC-256, Kala Enclave,
Gali No.i, Mandir Marg,
P. O. Makanpur, Distt. Ghaziabad (UP)

- Applicant

(By Advocate Shri S.C. Luthra)

- Versus -

2. Union of India, through,
the Secretary, Ministry of
Personnel, Public Grievances & Pension,
(Dept. of Personnel & Training),
North Block, New Delhi.

2. The Secretary,
Staff Selection Commission,
CGO Complex, Block No.12,
Lodhi Road, New Delhi.

- Respondents

(By Advocate Ms. Promila Safaya)

ORDER (ORAL)

Being aggrieved by non-regularisation of Group 'D' post present OA has been filed, seeking consideration for regularisation in terms of directions issued on 21.4.1988 in OA-324/1997.

2. Applicant was engaged on casual basis in 1985 and was disengaged in 1990. Applicant filed OA-324/1997 before this Court and by an order dated 21.4.1998 following directions have been issued :

3. In view of the above discussion, the inclusion of the name of applicant at Sr. No.55 in the "Revised Panel of Daily Wagers who are not eligible for regularisation" is clearly arbitrary. The respondents are directed to consider the entire service of the applicant, ignoring the provision that he was not in position on the date of promulgation of the scheme. They shall consider him initially for temporary status and eventually for engagement as a casual labour on the

(10)

basis of his seniority provided work is available. If work is available and no person senior to him is waiting to be engaged, he shall be engaged and his services as a casual labourer before his engagement shall be considered for conferring other benefits like regularisation and absorption in Group 'D'. It is obvious that the applicant shall be preferred over juniors and outsiders and for this purpose, all his earlier services shall be counted.

The OA is disposed of as above. No costs."

3. Earlier in the light of the decision in OA-1489/98 decided on 11.2.1998 a Scheme had been framed for daily wagers wherein name of applicant was not considered. A list of casual employees was issued on 24.11.1993 who were given temporary status. In pursuance of directions in OA-324/97 name of applicant was deleted from the list of daily wagers who were not found eligible for regularisation. CWP filed was dismissed as well as SLP. As the directions had not been complied with CR-401/2000 was filed against respondents. Thereafter respondents by an order dated 17.11.2000 re-engaged applicant and also conferred upon him temporary status w.e.f. 29-9-2000.

4. Casual workers, except Smt. Ram Pyari who had been appointed on 21.12.1995 on being accorded temporary status were brought to the permanent establishment by appointing to Group 'D' posts. Applicant being aggrieved with regularisation of his juniors preferred a representation which was not responded to, giving rise to the present OA.

5. Learned counsel for applicant Sh. Luthra contends that it is no more res integra and an admitted position that from 1987 till 1989 he had completed more than 206 days in two consecutive years to be accorded the benefit of regularisation and also his initial engagement was through Employment Exchange, yet the juniors had been considered and 19 of them had been regularised, which amounts to discrimination in

violation of Articles 14 and 16 of the Constitution of India.

6. On the other hand, Smt. Promila Safaya, learned counsel for respondents vehemently opposed the OA and stated that as there is no specific rule formulated for fixing seniority of casual labours not being regular employees of the Government in Staff Selection Commission casual workers re-engaged in connection with examination related work and their services are required on regular basis. The seniority is fixed on the basis of date of their engagement and length of service put in by them. Though applicant was engaged on 3.11.86 he was disengaged in 1989 and as he was not working in October 1989 other casual workers who were working in the year 1989-90 are still continuing in the Commission and had worked for 12 years or more. Being seniors on the basis of their length of service they have been regularised.

7. In the rejoinder applicant re-iterated his earlier pleas taken in the OA and further stated that decision of the Tribunal in OA-324/1997 had attained finality as the SLP filed against it had been dismissed by the Apex Court.

8. I have carefully considered the rival contentions of the parties and perused the material on record. It is not in dispute that being not regular employees of the Government no formula has been evolved to reckon the seniority of a casual worker. As per the DOPT Scheme of 10.9.1993 on being accorded temporary status as per availability of vacancies in the ratio of 2:3 subject to deployment of surplus staff a casual worker with temporary status is to be considered against Group 'D' post as per rules subject to his eligibility.

8. Respondents in the present case had formulated a criteria to reckon the seniority, not only the date of initial engagement but also the number of days rendered on casual basis by the incumbent to maintain a seniority list for consideration of regularisation.

9. In OA-324/1997 applicant's name though figured in the list of non-eligible daily wagers for regularisation was struck off and it had been directed to consider the entire service of applicant, ignoring the provision that he was not in position on the date of promulgation of the Scheme. Keeping in view the aforesaid, applicant was conferred upon temporary status, but the fact remains that those who were subsequently re-engaged have rendered more service than applicant he cannot be treated senior to them. These persons continued from 1989 till regularisation on casual basis, whereas applicant was disengaged. However, keeping in view his number of days service rendered by him and length of service, ignoring the cut off date, he has been placed in the list and would be considered on availability of Group 'D' post for regularisation/absorption on permanent basis in regular establishment. The contention of applicant that 19 persons who have been accorded regularisation are juniors to him, cannot be countenanced. Although no formula for assigning seniority is laid down by the Government, yet the criteria adopted by the respondents does not suffer from any illegality or is discriminatory in violation of Articles 14 and 16 of the Constitution of India.

10. In the result, for the foregoing reasons, OA is disposed of with a direction to the respondents to consider claim of applicant in the light of the decision of the Tribunal in OA-324/97 as per his seniority, subject to his suitability and availability of posts in Group 'D'. No costs.

S. Raju
(Shanker Raju)
Member (J)