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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1706 of 2003

New Delhi, this the 16th day of September, 2003

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

Vishan Kumar  
S/o Late Shri Hira Lal  
D/207 Gokul Puri,  
Delhi-110 094.

...Applicant

(By Advocate: Shri A.K. Mishra)

Versus

1. Government of India  
through Ministry of Defence,  
through its Secretary,  
Sena Bhawan, South Block,  
New Delhi.
2. Defence Research and Development  
Organisation (through its Director),  
Laser Science and Technology Centre,  
Metcalf House,  
Delhi-110 054. -Respondents

(By Advocate: Shri S.M. Arif)

O R D E R

The applicant has filed this OA under Section 19 of the Administrative Tribunal Act, 1985 seeking regularisation of the services for the post of Canteen Washer/Bearer. The case of the applicant is that he was engaged as a Canteen Washer against a vacant and sanctioned post on 20.10.1998 and since then he continued to work without any gap till 27.3.2003.

2. The applicant further submits that this post of Canteen Washer has been redesignated as Canteen Attendant and the respondents have recently advertised one post for filling the same and since the applicant had already worked for the period stated above and vacancy also exists so applicant should have been first considered for regularisation. It is further stated that the applicant had earlier filed an OA 580/2003 which was

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withdrawn with liberty to file fresh OA after making a representation to the respondents. But thereafter the applicant made a representation but respondents have not permitted the applicant to join w.e.f. March, 2003 though there was no letter of disengagement or termination given to the applicant.

3. In order to seek regularisation the applicant also relies upon the judgment of Hon ble Supreme Court in State of Haryana and Others Vs. Piara Singh and Others reported in 1992 (4) SCC 118 and Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others reported in 2001 (3) SCC 574.

4. It was also submitted that the work performed by the applicant is of a perennial nature and is available so the applicant should be regularised.

5. The respondents who contested the OA submitted that Shri Hira Lal was working in the office of the respondents as a helper, who expired on 27.12.1996 while in service. The applicant herein who is the son of Shri Hira Lal made a request for appointment on compassionate grounds but since the elder son of the deceased employee is already employed and the family also owns a house so the applicant was also informed of the same. However, the applicant again made a request for reconsideration of his case but his request was again turned down. It is wrong to say that the applicant was engaged as a canteen washer against a vacant and sanctioned post. It is further submitted that the applicant was engaged as and when required and was paid out of the Canteen Profit.

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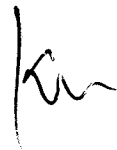
6. It is further submitted that since the department had advertised the post the applicant could have applied and participated in the selection and he would have been considered in accordance with the rules.

7. It is submitted that the law as given in Piara Singh (Supra) and Gujarat University case (Supra) is not applicable to the present facts of the case.

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

9. The learned counsel for the applicant has particularly relied upon para 46 in Piara Singh's case wherein it has been stated that ad hoc/temporary employees should not be replaced by another ad hoc or temporary employee and he must be replaced only by a regularly selected employee and whenever any occasion arises for regularisation a person who is already working for a sufficient number of days he should be considered for regularisation. As against this Shri Arif appearing for the respondent submitted that the applicant was neither a ad hoc employee nor a temporary employee. He was only a daily wager and when the post had been advertised to be filled up on temporary basis the applicant could have participated in the selection and would have been considered as per rules and as he has failed to do so, he cannot ask for regularisation.

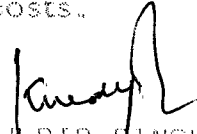
10. I have considered the rival contention as raised by the parties.



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11. The perusal of para 46 shows that the Hon'ble Supreme Court has emphasised restriction on the department that ad hoc/temporary employees should not be replaced by ad hoc or temporary employee because that takes away the right of the existing employee. I may further mention that as the applicant is admittedly a daily wager employee and has been unable to show any scheme or instructions of the Department of Personnel which may show that he has a right to be regularised under any of the Government instructions, so he has no claim. The advertisement for appointment of temporary canteen attendant was open to all. The applicant could have also applied for the same. His past experience would have also been taken note of as per rules had he applied. However, he has not independent right to seek regularisation.

12. In view of the above, I find that the OA has no merits and the same is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER (JUDL)

/Rakesh