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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2049 OF 2003

New Delhi, this the 9th day of March,2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Hemant Kumar,
S/o Late Shri Kanhiya Lal,
C-167, J.J.Colony, Inderpuri,
New Delhi-12

(By Advocate : Ms.Vaishalee Chaudhary, proxy for Shri
Yogesh Sharma)Applicant

Versus

1. Union of India,
through
the Secretary,
Department of Culture,
Shastri Bhawan,
New Delhi.
2. Director General,
Archaeological Survey of India,
Janpath,
New Delhi-11
3. Superintending Archaeologist,
Archaeological Survey of India,
Excavation Branch-II, Purana Quila,
New Delhi-1
4. Secretary,
Ministry of Personnel & P.G. & Pensions,
Department of Personnel & Training,
North Block,
Delhi

.....Respondents

(By Advocate : Shri R.N.Singh)

ORDER(ORAL)

This application under section 19 of the
Administrative Tribunals Act,1985 has been filed
seeking a direction to the respondents to re-engage
the applicant in service and also for a direction to
regularise the applicant on first available group "D"
post in due course.

Shri R.N. Singh

2. It is stated that the applicant was initially appointed as unskilled casual labour on daily wages basis in January, 1994. It appears that his services were terminated by verbal order w.e.f. 10.7.2001. Therefore, the applicant had earlier filed OA No. 971/2002. This Tribunal vide order dated 15.4.2002 directed the respondents to consider the representation of the applicant within stipulated period of two months. It is in pursuance of the order of this Tribunal that the Respondent No.3 has passed order dated 13.6.2002 (Annexure-A2) wherein it has been admitted that the applicant had worked w.e.f. 1.1.94 to 10.7.2001 as casual labour. Thereafter, the applicant also worked for 26 days from 16.2.2001 to 27.3.2001 at Naurangabad Excavation Camp. However, the applicant was not accorded the temporary status in term of the Scheme of 1993 as he was not in employment on the relevant date i.e. 10.9.93. The learned counsel laid stress on the fact that the applicant had worked satisfactorily for several years and he cannot be simply asked to go by an oral order. The learned counsel stated that even in the case of Union of India & Anr. Vs. Mohanpal etc. SLP (Civil) No. 2224/2000, the Hon'ble Supreme Court has directed the Govt. of India to prepare scheme for regularisation of casual labour from time to time. The learned counsel also alleged that the respondents are engaging freshers on daily wages basis as can be seen from advertisement for filling up post of Attendant etc.

3. The learned counsel of the respondents vehemently opposed the prayer of the applicant. He stated that this Tribunal by order dated 15.4.2002 in

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OA No.971/2002 had directed the respondents to consider the representation of the applicant by speaking order. An order 13.6.2002 has been passed in compliance to the directions of this Tribunal. If the applicant was aggrieved by non-compliance of the Tribunal order, he could have taken recourse to the legal remedy available to him. Referring to the reliefs claimed in the earlier OA No.971/2001, it is stated that if any of the same was not specifically adjudicated, it is presumed that the same has been rejected. The same relief has been claimed in this OA. Therefore, this application deserved to be dismissed on this preliminary ground alone. He also stated that there is no cause of action giving rise to filing of this OA. The applicant was daily wages worker and his services were dispensed with when the project came to an end or when his services were no longer required. He invited attention to the impugned order dated 13.6.2002 (Annexure- A-2) where it has been stated as follows:-

"It is incorrect and misleading to say that the S.A. Excavation Branch have engaged a number of casual labourers subsequently and they are all junior to the applicant. It may be stated that none of the casual junior, senior of the applicant have been engaged. It is fact that this office has set up a excavation at Dhalewan, Distt. Mansa (PB) on 13.12.2001 for temporarily for periodical excavation and only fresh casuals have been engaged for intermittent nature of work and applicant was also directed by the undersigned vide this office letter No.7/2/2000/EB-08, dated 4.1.2002 for temporary employment for the period of three months, he had not reported for temporary casual employment at the site."

According to the learned counsel, there is violation of any rule.



(P)

4. After hearing the learned counsel of both the parties and after perusal of the material available on record, it is noticed that the applicant was not eligible for grant of temporary status and consequential regularisation on the post in terms of Scheme of 1993. This has been so held in the case of Mohanpal (Supra). Therefore, the applicant's representation for grant of temporary status and for regularisation has already been rejected by the respondents. However, in the interest of justice it is desirable that the satisfactory service rendered by the applicant should not go waste. In case, there is any vacancy and the applicant was found suitable, he may be considered for such appointment after giving relaxation in the age limit to the extent of service rendered by him with the respondents. It is also directed that the applicant may be given preference for re-engagement if the respondent decide to engage freshers on daily wage basis. The claim of the applicant that he was not informed about his engagement for the work at Dhalewan, Distt. Mansa, cannot be verified. In case, the applicant is still interested in the work of temporary nature as Casual Labour, he should remain in touch with the respondents and the respondents would be duty bound to re-engage the applicant also along with others in case they have any work. So far as advertisement for filling up posts, it will be open to the applicant to apply for the same if he was otherwise eligible. He will get age relaxation to the extent of service rendered by the applicant as stated earlier but no relaxation is admissible to the applicant for such regular employment contrary to the provisions of recruitment

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rules. In case, the Central Govt. issues any notification for grant of temporary status in respect of persons who have been engaged after 10.9.93, the applicant may make fresh application for his engagement but at present no direction can be given either to the Central Government or to the respondents to consider the applicant's claim for grant of temporary status or for re-engagement/relaxation.

5. In view of what has been stated in the preceding paragraphs, this application is disposed of without any order as to costs.


(R.K. UPADHYAYA)

ADMINISTRATIVE MEMBER

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