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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2772 of 2003

New Delhi, this the 2nd day of August, 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Hirday Ram
son of Shri Ram Newal,
Govt. of India Press Canteen,
Ring Road, Mayapuri,
New Delhi-110064.

....Applicant

(By Advocate : Shri D.R. Gupta)

versus

1. Union of India through
Secretary, Ministry of Urban Development & P.A.,
Nirman Bhawan, New Delhi.
2. The Director of Printing,
Ministry of Urban Development and P.A.,
Nirman Bhawan, New Delhi.
3. The Manager,
Govt. of India Press, Mayapuri,
New Delhi.

....Respondents

(By Advocate : Shri R.N. Singh for Shri R.V. Sinha)

ORDER (ORAL)

Heard the learned counsel.

2. Applicant, who was employed on casual basis in the Canteen on 6.2.1986, being aggrieved by non-implementation of OM dated 11.10.1991 approached this Tribunal vide OA No.1537/1998, which was disposed of on 2.2.1999 deeming the applicant to be treated a Govt. servant within the provisions of OM ibid and directions were issued to the respondents to consider the case of the applicant for regularisation which would be given effect to w.e.f.6.2.1986 with difference of salary enhanced from the date not earlier than one year of filing of the OA, i.e., 10.8.1998 and the

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consideration would be for accommodation within the sanctioned strength of nine employees.

3. As the provisions were not complied with OA No.2981/2002 was filed by the applicant was disposed of on 18.11.2002 directing the respondents to dispose of the representation. On disposal of the representation vide order dated 7.4.2003 whereby the request of the applicant was turned down gives rise to the present OA.

4. Learned counsel of the applicant states that the applicant had been performing different types of duties, which includes Assistant Helper to Assistant Halwai. As there are vacancies available with the respondents due to transfer of one of the Assistant Halwai and death of another, the applicant should have been considered by the respondents on the post of Assistant Halwai otherwise also to group 'D' posts which were vacant after the decision of the Tribunal. The applicant's preferential claim for regularisation has not been considered.

5. Learned counsel by placing reliance on the decisions of the Apex Court in the case of State of W.B. vs. Pantha Chatterjee, (2003) 6 SCC 469 and Bhagwati Prasad vs. Delhi State Mineral Development Corporation, 1990 SCC (L&S) 174, it is contended that imposing upon a casual labour the statutory requirement of rules to assess the suitability would be harsh particularly when the person was working for a long spell.

6. On the other hand, learned counsel referred to the orders passed by the respondents and stated that as there is no vacancy available in group 'D' posts, the applicant could not be considered for regularisation. So far as consideration of group 'C' post is concerned, it is stated that for this a group 'D' official has to be promoted to the next higher post in group 'C' posts, thereafter the regularisation would be possible. As the aforesaid proposal for relaxation in Recruitment Rules had been forwarded to the Govt. and the same was not acceded to, applicant has no right to claim regularisation. Respondents' counsel has also raised the objection that the present OA is barred by doctrine of res-judicata.

7. I have carefully considered the rival contentions of the parties and perused the records. It is trite that casual labour does not hold the post but the type of work assigned shall determine the post on which he has to be regularised. It is not in dispute that in earlier OA, the applicant was deemed to be as a Govt. servant within the provisions of OM dated 11.10.1991. The sanctioned strength of nine varied from time to time. Applicant has a right to be considered against Group 'D' post. The rule position made thereafter in 1997 would have any application in the retrospect. Applicant who was engaged in 1986 has status of the Govt. servant. Be that may so, the objection raised by the respondents with regard to res-judicata is overruled as res judicata applies only when there is a final decision arrived at between the

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parties in a prior proceeding.. As the disposal of the representation and rejection of the request of the applicant has given rise to fresh cause of action, as the present OA is maintainable. Having regard to the letter issued by the respondents dated 7.4.2003 in compliance of the orders of this Tribunal, I find that it is not in true letter and spirit of the orders of this Tribunal. If the statutory requirement of rules are to be imposed the declaration of this Tribunal of deemed Govt. servant in respect of the applicant would be redundant. Moreover, keeping in view the apathy of the applicant, who has been continuing for 19 long years, there is a presumption of a vacancy in view of decision of the Hon'ble Supreme Court in the case of State of Haryana Vs. Piara Singh, (1992) 4 SCC 118 wherein it held that some time equitable consideration are to be apply in a case where the demand is strict compliance of the rules. Rules shall not be applied to the case of the applicant retrospectively and the Tribunal in earlier OA having taken cognizance of his being a Govt. servant and issuing direction making an effect of regularisation after 11.1.1992 within the sanctioned strength.

8. In the result, OA is partly allowed. The impugned order is set aside. Keeping in view the above observations, the respondents are directed to consider the claim of the applicant for regularisation within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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