

**Central Administrative Tribunal
Principal Bench**

OA No. 2945/2003

New Delhi, this the 29th day of November, 2005

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

Vijendra Singh Gusain
S/o Attar Singh Gusain
R/o Village Silogi, P.O. Karwadi
Distt. Tehri Garhwal, Uttranchal.

...Applicant

(By Advocate: None)

Versus

Government of India
Ministry of Finance through

1. Secretary,
Depart of Revenue,
Central Board of Excise and Customs,
North Block, New Delhi.
2. Customs and Central Excise through
Chief Commissioner,
Meerut.
3. Deputy Commissioner,
Customs and Central Excise Division,
E-Block, Nehru Colony Dehradun,
Uttranchal.
4. Superintendent,
Customs and Central Excise
Rishikesh Range,
Rishikesh, Uttranchal.

Respondents

(By Advocate: Shri H.K. Gangwani)

ORDER (ORAL)

This Original Application was disposed of by this Tribunal vide its order dated 29.06.2004 but the said order has been recalled in RA No. 239/2004 on 24.03.2005.

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2. Applicant in this O.A. has sought regularization in Group 'D' post in the light of DoP&T guidelines issued in 1988 on the ground that he has been continuously working on daily wages since 1997, with all consequential benefits.

3. It is not disputed that the applicant is still working and has been accorded accommodation in 'the premises. It is stated that applicant had completed 229 days from October, 2001 to August, 2002 and has been paid the wages. Accordingly, in the above backdrop, it has been stated that the applicant is entitled for consideration to be engaged on regular basis and non-sponsorship through employment exchange is no more an impediment even then his claim has been rejected by the respondents.

4. On the other hand, Shri H.K. Gangwani, learned counsel for the respondents stated that applicant, who was not in engagement on 1.1.1993, cannot be accorded temporary status as per DoP&T OM dated 10.09.1993 and as regards working of the applicant from April, 1997, it is stated that no daily wager has worked for more than 206 days and as there is no evidence to show that the applicant had been registered with employment exchange and had rendered minimum two years' continuous service on casual basis, his case cannot be considered.

5. Learned counsel would also contend that at present there is no vacancy available to accommodate the applicant on regular basis and as and when a vacancy is available and

if the applicant applies, he would be considered for the same.

6. On careful consideration of the rival contentions of the parties and for want of any rejoinder filed by the applicant, whatever has been stated in the counter reply, having not been rebutted, has to be treated as a factual position wherein the applicant is stated to have not completed 206/240 days in two consecutive years. But the fact remained that applicant had worked from October, 2001 to August, 2002 and had been paid the arrears, which is not rebutted by the respondents. As such, sponsorship through employment exchange not being an impediment, applicant is entitled to be considered for Group 'D' post as and when vacancy arises and if he applies for the same, respondents would consider his case in the light of DoP&T OM of 1988 *ibid*. Till then, as the applicant is still continuing in service with availability of work, except in changed circumstances, respondents are directed to maintain status-quo.

7. With the above directions, the present Original Application stands disposed of.


(Shanker Raju)
Member (J)

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