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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3166/2003

New Delhi, this the 28th day of June, 2004

Hon'ble Shri S.K.Naik, Member (A)

Bhoj Dutt Nirwal
H.No.320, VPO Bhakhtapur
Delhi-110036 .. Applicant

(Shri U. Srivastava, Advocate)

versus

Union of India, through

1. Secretary
Min. of Industry
Udyog Bhavan, New Delhi
2. Chief Controller of Accounts
Ministry of Industry
Room No.517D, Udyog Bhavan
New Delhi .. Respondents

(Shri K.C.D. Gangwani, Advocate)

O R D E R

Applicant - Shri Bhoj Dutt Nirwal - has initially filed this OA on 23.12.2003 but amended the same vide amended ^{ment} application dated 6.3.2004 with the permission of the Tribunal.

2. The main grievance of the applicant is that he was engaged as casual labourer in May, 2001 and continued to be so engaged until June, 2003 when the respondents have discontinued his services. Aggrieved against the discontinuance of his services, the applicant has filed this OA seeking a direction to the respondents to consider his reengagement as a casual labourer. He contends that juniors and outsiders have been engaged by the respondents, which is illegal.

3. Counsel for the applicant has relied on the judgments of the Hon'ble Supreme Court in Central Welfare

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Board & others v. Anjali Bepari (Ms.) & others, (1996)

10 SCC 133 and Ghaziabad Development Authority & others v. Vikram Chaudhary & others, (1995) 5 SCC 210.

4. Counsel further contends that while it was not necessary for the name of the applicant to be sponsored by the Employment Exchange, as has been held in the case of Anjali Bepari (supra), the Employment Exchange had sponsored his name and even then he has not been reengaged. As per counsel for applicant, it was the duty of the respondents to reengage him as his services in the past were found to be satisfactory.

5. In support of this contention, the counsel relies on the judgment of the Hon'ble Apex Court in Vikram Chaudhary's case (supra), in which it has been held that the principle of not terminating the services of employees so long as the respondents had work on hand and to give preference to displaced employees for re-employment was consistent with the principles of natural justice and equity, justice and good conscience.

6. The respondents have defended their action. Counsel for respondents submits that the applicant was engaged as a casual labourer for a seasonal work and that too for a fixed period and, therefore, his services had to be dispensed with on completion of the said period. On the basis of his engagement for a fixed term, he cannot claim any legal right to be continued for the

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future and it would, therefore, be incorrect to say that the action on part of the respondents is either arbitrary or is in violation of the principles of natural justice.

7. Counsel for respondents has further contended that the reliance placed by the applicant on the judgments referred to in the earlier paragraphs is not applicable to the facts of the present case. In that, the judgments cited above pertained to long continuance of casual employees in projects which had a fixed period of completion. In the present case, the counsel contends that the engagement was purely of a seasonal nature, i.e., filling up of water in desert coolers during summer and, therefore, the respondents had asked for sponsorship from the Employment Exchange. The counsel further contends that the name of the applicant also was received from the Employment Exchange and he was subjected to the selection process by the selection committee. However, he figures at S1.No.9 of the merit list and was, therefore, not offered the engagement. The counsel has volunteered to produce the records with regard to the selection of the casual labourer for engagement by the respondents and I find that he has been placed at S1.No.9 of the panel for selection.

8. The counsel has, therefore, contended that in keeping with the principles of natural justice, the applicant was afforded an opportunity of being considered but has not been recommended by the Selection committee and, therefore, he cannot assert any right of being reengaged.

Jasoor

9. While I agree that the respondents have considered the candidature of the applicant along with other candidates who were sponsored by the Employment Exchange and further that he has been placed only at Sl.No. 9 of the merit list so prepared by the selection committee and, therefore, it cannot be said that the principle of natural justice has been violated, I find from the records that the respondents have been engaging the applicant for varying period from the year 2001. It appears to me that even though the respondents have been claiming that the casual labourers are being engaged for seasonal work, the same does not seem to be correct. In fact, as per their own statement the applicant was engaged during the months from May to December, 2001 and again from March, 2002 upto January, 2003 almost 11 months continuously. Such a long and continuous engagement over the months cannot be justified on the ground of seasonal engagement. I also find from the note at Annexure A-1 that the applicant was engaged from March, 2002 to January, 2003 without his name being sponsored by the Employment Exchange. It was only in April, 2003 that the respondents sent a requisition for names from the Employment Exchange and the name of the applicant was also sponsored by them. While it is not for the Tribunal to probe as to whether the selection has been fairly made by the committee who have not placed the name of the applicant on the panel; I must, however, observe that the conduct of the respondents have not been fair and just. It is not clear as to whether the initial engagement of the applicant was through the Employment

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Exchange and even if it was made on the basis of sponsorship by the Employment Exchange, no explanation is forthcoming as to why his services were retained right from May to December, 2001, without any break. Secondly, his further engagement from March, 2002 until January, 2003 without any reference from the Employment Exchange also remains unexplained. If his reengagement from March, 2002 was made on the basis of his right of being reengaged on the basis of his prior engagement, there is no reason as to why the respondents called for the names from the Employment Exchange during April, 2003 when they could have again reengaged the applicant on same basis. The conduct of the respondents, in the circumstances, certainly has given rise to high hopes in the mind of the applicant that he would continue to be so reengaged and for long spells against the so-called seasonal work until he finds regular berth for being regularised. Obviously, there have been some lapses by some authority in the Department who appear to be playing with the gullible casual labourer. The respondents-Department should inquire into the matter and hopefully would fix responsibility. Since the applicant has not been able to measure-up to the expectation of the selection committee, I have no other option but to reject his plea. The reliance placed by the counsel for applicant on the judgments referred to above will also not help the case of the applicant inasmuch as the facts and issues dealt with in them are different and distinguishable from the facts of the present case.

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10. Under the circumstances, the OA is dismissed without any order as to costs.

Naik
(S.K. Naik)
Member (A)

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