(20)

Item No.13
M.A. NO.111/2004 IN
O.A. No.19/2003
6.5.2004

Present : Shri S.K. Gupta, learned counsel of the applicants

Shri Rajinder Nischal, learned counsel of the respondents.

MA 111/2004

This misc. application under Rule 24 of the CAT (Procedure) Rules, 1987 has been filed for execution of orders dated 3.7.2003 in OA 19/2003. Three applicants S/Shri Sripal, Kapil Dev, Vinay Paswan and Jagdish Prasad have filed OA jointly wherein this Tribunal issued the following directions:-

> "11. Having regard of the aforesaid, OA is disposed of with directions to the respondents to consider the applicant's case for regularisation in the light of the DoPT's OM dated 7.6.1988 as well as instructions dated 26.10.1984 within a period of three months from the date of receipt of a copy of this order. However, this shall be subject to availability of Group 'D' posts. In so far as the re-engagement of the applicants is considered, if respondents have work of the similar nature as performed by the applicants, they shall be considered for such re-engagement in preference to their juniors and outsiders. No costs."

2. The grievance of the applicants is that in spite of the directions of this Tribunal, the applicants have not been re-engaged and their cases have also not been considered for regularisation.

3. In the reply filed on behalf of respondents to the present misc. application, it has been stated that the applicants were engaged as casual labourers to work as 'Waterman' or for work of purely

temporary nature and their services were dispensed with as there was no work left for them in the Directorate. It has been further stated by the respondents that the work of filling of water-coolers during the summer season is being done by the labourers of Contractor to whom the contract for the work is awarded. However, it is stated by the respondents that no casual employee has been taken after the dis-engagement of the applicants and even no post of Group 'D' has been filled up.

4. During the course of the arguments, the learned counsel of the respondents fairly stated that he has been instructed that the respondents had initiated the process to fill up some regular group 'D' vacancies arising due to the retirement of the incumbents in accordance with the recruitment rules. It has, therefore, been stated on behalf of the respondents that if the disengaged casual labourers make applications, their candidatures will be considered ~~and offered~~ subject to their suitability as per the recruitment rules.

5. Learned counsel of the applicants also invited attention to the judgment of this Tribunal dated 24.8.2000 in CP No.238/2000 arising in OA No.1553/1999 wherein this Tribunal has observed as under:-

> "2. Respondent Nos.1 and 2 who are the contemners have appeared before us in person in pursuance of the aforesaid notices issued to them. Aforesaid contemners have been

(22)

heard both through their counsel as also in person. As far as contemner No.1 is concerned, he has maintained that he has no work for applicants and that his department cannot afford to engage them in compliance with the orders issued by this Tribunal. He has not disputed that the aforesaid persons, namely, S/Shri Sudhi Ram, Sunil, Kedar Nath and Satya Dev, are doing the work at site. He has sought to maintain that they have not been engaged by the contemners but have been engaged by the aforesaid contractor M/s. Ref. Con. Engineerings. As has been observed in the aforesaid order, the contemners have devised a clever method of flouting the orders passed by the Tribunal. Not only this, the contemners have persisted in asserting that there is no work for applicants. This is nothing short of a clear contempt of the Tribunal."

In that case, this Tribunal had directed payment of fine of Rs.2000/- and respondents were also held guilty of contempt and were sentenced civil imprisonment for a period of seven days. The learned counsel of the applicants stated that in view of the clear direction of this Tribunal, the awarding of contract in respect of the jobs performed by the applicants was willful device to defeat the orders of this Tribunal. However, he stated that the applicants have not filed the contempt petition with a hope that the respondents will engage the applicants either for casual work or could be absorbed against regular vacancies of group 'D' posts.

6. After considering the facts of this case and contentions raised on behalf of the parties, it appears that the orders of this Tribunal dated 3.7.2003 in OA 19/2003 have not been properly implemented by the respondents. The respondents have given a contract for doing the jobs earlier done by

(23)

the applicants after receipt of a copy of the order. They should have considered providing jobs to the applicants which they were earlier doing and only the remaining work should have been given to the Contractor. However, in view of the fact that the respondents are considering filling up group 'D' vacant posts, it is directed that the applicants will be considered against those vacant posts. It is further directed that any job of casual nature also arising, the applicants will be considered for performing those jobs also. It is clarified that the applicants will be entitled to age relaxation for the period they have already rendered the service even if they are being considered for regular employment against group 'D' posts. The respondents have already clarified that they will not insist of sponsorship from the employment exchange for group 'D' posts.

7. In view of these facts, the respondents are directed to implement the orders within next three months from the date of receipt of a copy of this order by providing job of casual nature to the applicants, if it is so available or in the alternative consider the cases of the applicants against the group 'D' vacancies, which have arisen on account of retirement etc. of regular employees.

8. This misc. application is accordingly disposed of without any order as to costs.

(R.K. Upadhyaya)
Administrative Member

/ravi/