

(Circular stamp with a stylized 'S' or 'C' inside)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

No.125/2003

New Delhi, this 15th the day of January, 2004

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

Sanjeet Singh

H.No.902, Mundkka, New Delhi

.. Applicant

(Shri M.K.Bhardwaj, Advocate)

versus

1. Secretary (Revenue)

Ministry of Finance, New Delhi

2. Registrar

Custom, Excise & Gold (Control)

Appellate Tribunal, New Delhi

3. Deputy Registrar

Custom, Excise & Gold (Control)

Appellate Tribunal, New Delhi

4. Man Singh

5. Manjoj

6. Sunder

.. Respondents

(Shri R.S.Paliwal with Shri V.D.Makhija, Advocates)

ORDER

By virtue of the present OA, applicant seeks a direction to the respondents to re-engage him as casual labour in preference to juniors and outsiders. He claims that he had worked as casual labour with the respondents from 23.6.99 to 18.5.2000 after having been sponsored by the Employment Exchange. He had made a representation to this effect but in vain.

2. The counsel for the applicant has justified re-engagement of the applicant by the respondents on the ground that the applicant was engaged in a job of perennial nature and not seasonal as claimed by the respondents. The second argument pertains to juniors and outsiders having been re-engaged subsequent to applicant's disengagement. The counsel has contended that the case is covered by the judgement of this

done

Tribunal in Anand & Ors. Vs. UOI in OA 224/2002 dated 21.3.2002, in which the Tribunal not only ordered re-engag~men of the applicants therein but also to consider their regularisation.

3. The counsel for the respondents has r~ebuted the claim of the applicant raising a preliminary objection. He has stated that the applicant has come to this Tribunal with unclean hands and concealed the material facts and misrepresented the true and correct facts of the case. The experience certificates annexed by the applicant and allegedly issued by the answering respondents were never issued by the respondent-department. He has alleged that the certificates are forged and fabricated as is clear from bare perusal of the originals of the same. On this ground alone, the application of the applicant deserves to be rejected.

4. On the merits of the case, the counsel for the respondents has contended that the department engages daily wagers to do the work of seasonal nature to fill water in the water coolers and according to the directives of the Employment Exchange they are to be engaged only for a period of 89 days. The counsel also contended that a daily wager should not be engaged for more than 89 days for the reason that allowing to continue the persons already working will lead to depriving the other candidates who have enrolled themselves with the Employment Exchange of the job of daily wager. Relying on the directives of the Employment Exchange, the counsel has contended that the applicant should have no right for re-engagement and therefore the question of discrimination would not arise. After one

(13)

set of daily wagers complete the job, Employment Exchange sponsors another set of people and it can not be stated that there is any discrimination and no person later to the applicant has been engaged as claimed by him.

5. With regard to the claim of the applicant that he had been engaged for work for a period of 201 days from 23.6.1999 to 18.5.2000, the counsel for the respondents has vehemently denied the same. He has stated that the certificates of experience at Annexure A-1 have not been issued by the respondent-department. The documents appears to have been manipulated through cutting and pasting of various documents, thereafter making photocopies thereof. He however has not denied that the applicant was engaged from 23.6.1999 to 18.4.2000, which does not come to 201 days as claimed by the applicant. The counsel has further contended that reliance of the applicant's case in the case of OA 224/2002 (supra) is not applicable to the facts and circumstances of the present case. As the work of the nature performed by daily wagers has been now shifted to Mumbai and other cities, there is no need of any daily wager/casual worker. The counsel has contended that in the absence of any work, The Tribunal cannot force the respondent for his re-engagement. He has therefore contended that the application being devoid of merit should be rejected.

6. I have carefully considered the matter and perused the records. With regard to the preliminary objection raised by the respondents, even though the applicant in his rejoinder has denied that he has forged the documents, I find from the certificate allegedly issued by the Customs, Excise & Gold (Control) Appellate



Tribunal that it does not contain either the date or file number. It also does not specify the period for which Shri Sanjeet Singh, s/o Sh. Raj Singh worked in the said office. I also had an occasion to compare the same with the original copy produced by the applicant, but he had no reply with regard to the missing file No. and date. The counsel for the respondents stoutly denied the claim of the applicant that the signature thereon is that of Shri S.Chandran, Deputy Registrar. Further the claim of the applicant that he has made representation at appropriate time does not appear to be correct. Annexure A-2 at page 10 of the paper book which is addressed to the Secretary (Revenue) with a copy to the Union Labour Minister does not contain any date and the same was submitted with a request therein for getting him appointed as Peon as regular basis. Had the applicant really been disengaged arbitrarily and his juniors had been re-engaged, the normal course for him would have been to file a representation before the appropriate authority who had engaged him earlier to re-engage him instead of making a representation before the Secretary (Revenue) requesting him to get him appointed as Peon on regular basis. Viewed in this context and also considering the fact that he was sponsored by the Employment Exchange for work of seasonal nature i.e. filling water in the desert water coolers and the documents filed by him which are of doubtful nature, I find that he has perhaps attempted to make out a case of re-engagement even though he had been disengaged during the year 2000. Even though the counsel for the applicant has not produced a copy of the directives or circular of the Employment Exchange which states that daily wagers are not to continue beyond 89 days, I quite see the plea

5

that the work of filling water in water coolers in summer season is of seasonal nature which often gets prolonged on one or the other pretext. That would however not justify re-engagement/appointment of daily wagers repeatedly. It cannot be a conduit for regular appointment which would be back-door entry detrimental to service and breed seeds of nepotism and favouratism as has been held in the case of State of Himachal Pradesh Vs. Suresh Kumar 1996(6) ATC 336. Since there is no work available with the respondents, the question of re-engagement will not arise. The Tribunal in the absence of any work cannot force the department to re-engage the applicant. In view of this position I find no merit in the present OA and the same is accordingly dismissed. No costs.

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

/gtv/