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**Central Administrative Tribunal, Principal Bench**

**Original Application No.3007 of 2002**

New Delhi, this the 3rd day of December, 2002

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**  
**Hon'ble Mr. S.A.T. Rizvi, Member (A)**

Jagan Nath  
S/o Shri Viswa Nath,  
R/o PWD-3, Staff Quarter  
D.A. Flats, Nimri Colony,  
Ashok Vihar Phase IV  
Delhi-52

....Applicant

(By Advocate: Shri R.K. Kapoor)

**Versus**

1. The Director General of Works,  
CPWD, Nirman Bhawan,  
New Delhi
2. The Executive Engineer,  
P.W.D., Division III (NCTD)  
Under ISBT Bridge, Kashmiri Gate,  
Delhi

....Respondents

**O R D E R (ORAL)**

**By Justice V.S. Aggarwal, Chairman**

By virtue of the present application, Jagan Nath seeks quashing of the order of 26.10.2002 and to declare that the same is in violation of the orders of the Delhi High Court dated 25.9.98 read with Arbitration Award of 31.1.1988. It is further prayed that directions should be issued to regularise the applicant as Laboratory Assistant.

2. Needless to state that vide the impugned order of 26.10.2002, it has been directed that applicant is not to perform the duties of Lab. Assistant w.e.f. 28.10.2002 and his pay was re-fixed in the scale of 2550-3200 w.e.f. 29.10.2002.

3. Some of the relevant facts are that the applicant

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had joined as a Muster Roll Beldar. He asserts that he was appointed to perform the duties of Lab. Assistant w.e.f. 5.5.93. When he was appointed as Laboratory Assistant, his muster roll status came to an end. He was being paid accordingly. There was an arbitration award pertaining to the recategorisation of various categories of workers, the respondents by virtue of which were directed to implement the arbitration award and also to place them in the category of Skilled Workman in the pre-revised scale of Rs.260-430.

4. There was an apprehension that the applicant may be reverted from the post of Lab. Assistant to Beldar. An application was filed in this Tribunal. The same was dismissed stating that enquiry clerks were not entitled to be regularised. There was no independent reasoning which is stated to have been given against the Lab. Assistants. A writ petition was filed in the Delhi High Court against the said order passed by this Tribunal and the Delhi High Court on 20.12.2001 had dismissed the same granting liberty to the petitioners to re-agitate the matter.

5. By virtue of the present application, the applicant assails the order already referred to above, stating that he cannot be reverted arbitrarily because he is fully qualified to be posted as Lab. Assistant and the benefit of the arbitration award should be granted to him. The impugned order reads:

"Consequent upon the Hon'ble CAT, PB's order/judgement dated 1.10.2001 on the O.A. No.30/2001 and as per the direction of DGW,CPWD vide their letter No.22/9/93-EC-10

(Volume-VIII) (Hindi) dated 4.9.2002 Sh. Jagan Nath S/o Sh.Viswa Nath posted under this division is directed not to perform duties of Lab. Asstt with effect from 29.10.2002 F.N. and accordingly his pay is hereby re-fixed in the pay scale of Rs.2550-55-2660-60-3200 with effect from 29.10.2002 F.N. Due to re-fixation of his pay, his basic pay in the scale of Rs.2550-55-2660-60-3200 will be as under:

Period from which pay is re-fixed 29.10.2002 F.N.

Pay as on 28.10.2002 in the  
scale of Rs.3200-85-4900 3795.00

Pay as on 29.10.2002 in the  
scale of Rs.2550-3200 2960.00

Next date of increment 1.5.2003

Note: No recovery is to be made from the  
official for the period upto 28.10.2002"

6. So far as the prayer of the applicant that he should be regularised and allowed to continue as Lab. Assistant is concerned, we have no hesitation in rejecting the same. Reasons are not far to fetch. It is obvious from the aforesaid that the applicant has not been appointed as Lab. Assistant in accordance with the recruitment rules. No person can be allowed to be regularised de-hors the rules. The applicant having been appointed in terms of the same, the said plea necessarily must fail.

7. Our attention was being drawn towards the supplementary affidavit filed by the applicant and the following extract of the award relied upon by the applicant was pressed into service. It reads -

"Regarding Lab Assistant

I find from the evidence (UW-7) that a worker, Beldar has been deployed almost over a decade in Laboratory at Calcutta. It was further observed that he was doing the duties of Machine Operator operating independently cube testing machine in the

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Laboratory. The Party Number 1 is not justified in extracting above mentioned work from a workman who has been classified as Un-skilled. In case they do so it is not known why he is not paid accordingly. I award that such of the workman should be classified/categorised as Laboratory Assistant and should be placed on i.e. category of skilled workman in the pre-revised scale of Rs.260-430. I agree with Brother Arbitrator Shri H.S. Vats in this regard. This is my Award."

Perusal of it clearly shows that the Award simply stated that the workman should be categorised as Lab. Assistant and should be placed in the category of skilled workman. It nowhere points out that the Award declares that the applicant should be regularised as Lab. Assistant irrespective of the recruitment rules.

8. Reliance was further being placed on the letter of Nirman Mahanideshalaya, Kendriya Lok Nirman Vibhag dated 4.7.88. The said letter states -

"Those Muster Roll workers who have rendered 240 days service each in two consecutive years in a higher category may be regularised in the Higher category even if they have worked in the lower category for some time subject to the condition, that the services rendered in the lower category would not be considered for the purpose of seniority or for any other purpose and further subject to the condition that an option should be taken from the concerned muster roll worker at the time of his absorption in the lower/higher category of work charge establishment and such of those opt for absorption of the lower category may be allowed to do so."

9. Once again, it does not help the applicant. So far as the relief that is claimed by him, the applicant admittedly is a muster roll worker. If incidentally he was discharging certain duties, that does not confer any right

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on him and the contention to that effect therefore, must be rejected.

10. In fact the Delhi High Court in its judgement of 20.12.2001, while disposing of the Civil Writ Petition No.6442/2001 had also gone into the same with respect to the similar prayer. The Delhi High Court concluded:

"Petitioners filed their respective OAs before Tribunal on this claiming regularisation of their services as Enquiry Clerks for having worked in that capacity for a number of years. Tribunal dismissed their OAs holding that neither award had directed their regularisation nor did the post of Enquiry Clerk exist against which they could be regularised.

Petitioners have not filed this petition challenging Tribunal order. Their counsel Mr.Kapoor again harped on Arbitration Award dated 31.1.88 to claim regularisation of services for them.

We have seen the copy of award which was submitted today but have not come across any of its terms directing regularisation of petitioners services as Enquiry Clerks. Confronted with this L/C for petitioners shifted his stand to claim regularisation under Circular dated 4.7.1988 which he claimed to postulate that muster roll casual labour having worked for 240 days in the higher category were entitled to regularisation in that category. We are unable to examine this plea because petitioners had failed to take it in their OA before Tribunal." (emphasis supplied)

Identical plea is being raised once again. We are of the considered opinion that the Award relied upon does not direct regularisation of the applicant in any category either as Lab. Assistant or Enquiry Clerk.

11. The applicant, as per his own case, had been



employed as Muster Roll Beldar. He had no right, as referred to above, to the post of Lab. Assistant and once he is being reverted and asked not to perform the duties of the said post, the order has no civil consequences.

12. Resultantly it must be held that the present application is without merit. It must fail and is dismissed in limine.

( S.A.T. Rizvi )  
Member (A)

( V.S. Aggarwal )  
Chairman

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