

Central Administrative Tribunal, Principal Bench
New Delhi

O.A. No.795/2002

New Delhi this the 3rd day of December, 2002

Hon'ble Mr.Kuldip Singh, Member (J)
Hon'ble Mr. M. P. Singh, Member (A)

1. All India CPWD (MRM) Karamchari Sangathan (Regd.), through its President Shri Satish Kumar 4823, Balbir Nagar Extn. Gali No.13, Shahdara, Delhi-32.
2. Ajay Kumar, S/o Shri Ram Chandra Pd. Lab. Assistant, C/o the Applicant No.1.

- Applicants

(By Advocate : Shri Naresh Kaushik)

Versus

1. The Director General (Works), CPWD, Nirman Bhavan, New Delhi.
2. The Superintending Engineer, PWD, Circle-7 near, Nizamuddin Bridge, Patpar Ganj, Delhi.
3. The Executive Engineer, PWD - 30, Patparganj, Delhi.

- Respondents

(By Advocate : Shri Vijay Pandita)

ORDER

Mr. M.P. Singh, Member (A)

Learned counsel for the applicants has prayed for deletion of the applicant No.1 i.e. All India CPWD (MRM) Karamchari Sangathan (Regd.) from the array of parties. He is permitted to do so.

2. By filing this OA, the applicant has sought a direction to quash and set aside the order dated 7.3.2002 whereby it has been proposed to reduce the applicant in

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rank from the post of Lab. Assistant to Balder. He has also sought a direction to restrain the respondents from withdrawing the benefits which has finally accrued to him in favour of the applicant in terms of order/circular dated 9.9.1999 issued by the respondents.

3. The brief facts of the case are that the applicant was engaged as Beldar on Muster Roll basis w.e.f. 13.4.1985 by the respondents. However, no letter of appointment was issued to the applicant. He was assigned the duties of Lab. Assistant by the respondents and has been discharging such duty w.e.f. 2.7.1996 uninterruptedly. He was, however, given the pay scale of the Lab. Assistant vide letter dated 14.9.2000. According to the applicant, an arbitration award was rendered on 31.1.1988 in respect of dispute between the management and employees of C.P.W.D. regarding reclassification/recategorisation of work charge staff and regular classified categories w.e.f. 1.1.1973. The aforesaid arbitration award was confirmed by the Hon'ble High Court of Delhi on 25.9.1998 by modifying it to some extent. The Deputy Director (Admin.) I, issued an order regarding absorption of Muster Roll Workers on the work-charged establishment in C.P.W.D. As per the said order dated 4.7.1988, the Muster Roll workers who have rendered 240 days service each in two consecutive years in higher category were to be regularised in the higher category even they had worked in the lower category for sometime. Despite the above said order dated 4.7.1988,

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the applicant has not been conferred the status of work-charged establishment employee in the higher category of Lab. Assistant.

4. In pursuance of the order dated 9.9.1999, the respondents fixed the salary of the applicant vide order dated 7.9.2000 in new pay scale of Rs.3200-4900. However, despite the above said circumstances, the respondent vide order dated 7.3.2002 sought to withdraw the benefit of new pay scale of Lab. Assistant together with entitlement to that post reverting to the post of Beldar on the ground of non-availability of sanctioned post in laboratory under the said division. The aforesaid action of the respondents is illegal, arbitrary and unconstitutional apart from contrary to the arbitration award on 31.1.1988. Aggrieved by this, he has filed this OA claiming the aforesaid reliefs.


5. The respondents in their reply have stated that the applicant was engaged on Muster Roll basis w.e.f. 13.4.1985 and subsequently he was engaged as Beldar on temporary basis w.e.f. 1.9.1993. Thereafter he was appointed as Beldar on regular basis vide order dated 21.6.1996. He was asked to work as a Helper in laboratory meant for the road testing works established by the PWD. After implementation of the modified arbitration award, the respondents vide office order dated 7.9.2001 (Annexure R) had fixed the pay of the applicant in the scale of pay of Rs.3200-4900. According to the respondents, the applicant has never been promoted



to the post of Lab. Assistant by the PWD. As such the question of his appointment to the post of Lab. Assistant does not arise. Further Beldar is not a feeder category for promotion to the post of Lab. Assistant. It is submitted that the Beldars have promotional avenues to the category of Carpenter, Painter, Mason etc. The benefit for the period, he was asked to help the Junior Engineer in lab. has already been given to him. When his services were no more required by the respondents, he has been directed to work as a Beldar to which post he was actually recruited. That apart at present under the orders of Hon'ble Supreme Court all the Hot Mix plants which cause pollution have been banned. Therefore, the applicant's claim cannot be even considered, as there is no requirement of work by the respondents. Moreover, the applicant has not been promoted or appointed as a Lab. Assistant under the provisions of the existing Recruitment rules. In view of the submissions made above, the applicant is not entitled to grant of any relief as prayed for.

6. Heard learned counsel for the rival contesting parties and perused the material placed on record.

7. During the course of the submissions, learned counsel for the applicant has submitted that the applicant has been continuing to work as Lab. Assistant since 1996, he has already been paid salary for that period. Therefore, in view of the service rendered by him for a long period and experience gained by him, his services should be



regularised in that post. In support of his contention, he has relied upon the judgement of the Hon'ble Supreme Court in the case of Gujarat Agriculture University Vs. Rathod Labhu Bechar and Ors. ((2001) 3 SCC 574). He has further submitted that in view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgement, the legal obligation is cast on the respondents; if there be a vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such posts for their absorption."

8. On the other hand, learned counsel for the respondents has submitted that the applicant is not entitled for appointment as Lab. Assistant on regular basis, as he was never appointed to the post of Lab. Assistant. Moreover, no sanctioned post of Lab. Assistant is available to consider his claim for regularisation in the said post. The post of Lab. Assistant is required to be fill up in accordance with the Recruitment Rules. As per the Recruitment Rules, the post of Beldar is not a feeder cadre post for promotion to the post of Lab. Assistant. It is further submitted by the learned counsel for the respondents that in terms of letter dated 9.9.1999, the benefit of said arbitration award is applicable in respect to the workers, who were on the roll of CPWD on 1.4.1981 and is not applicable to any kind of daily rated workers. Since the applicant was not on Muster Roll basis on 1.4.1981,

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as such he is not entitled for grant of any benefit of the said arbitration award. In support of his contention, learned counsel has relied upon the judgements of the Hon'ble Supreme Court in the cases of State of M.P. and Another Vs. Dharam Bir ((1998) 6 SCC 165), Sodagar Singh Vs. State of Punjab ((1997) 2 SCC 554) and the judgement of this Tribunal in the case of Jai Prakash and Others Vs. The Director General of Works, CPWD (OA No.55/2002 decided on 20.9.2002).

9. It is an admitted position that the applicant has neither been appointed to the post of Lab. Assistant in accordance with the Recruitment Rules nor any order appointing the applicant to the post of Lab. Assistant had been issued by the respondents. The applicant is holding the regular post of Beldar and has only been asked to look after the work of Lab. Assistant. It is also not in dispute that the post of Beldar is not a feeder cadre post for promotion to the post of Lab. Assistant. The submissions made to the effect by the learned counsel for the respondents in Para 1 and Para 4.xiv of the counter reply have not been rebutted by the applicant in his rejoinder. If the applicant is appointed on regular basis to the post of Lab. Assistant merely on the ground that he has been working on that post for the last six years and has gained long experience, it would amount to make an appointment through back door. The appointment of the Lab. Assistant is required to be made in accordance with the Recruitment Rules. There may be some more persons who are also working as Beldar and may be possessing the

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requisite qualification required for the post of Lab. Assistant but have not been picked up by the respondents to look after the work of the Lab. Assistant. Thus the regularisation of the applicant to the post of Lab. Assistant will deny an equal opportunity to such similarly placed persons and would amount to discrimination. We are, therefore, of the considered view that the applicant cannot be considered for regularisation de hors the rules merely on the ground that he has been discharging the functions of the said post since 1996. In our view, we are fortified with the judgements of the Hon'ble Supreme Court in the cases of State of M.P. and Another Vs. Dharam Bir and Sodagar Singh Vs. State of Punjab (supra). Reliance placed by the learned counsel for the applicants in the case of Gujarat Agriculture University Vs. Rathod Labhu Bechar and Ors. (supra) is not applicable in the present case, as the same relates to the regularisation of daily rated labourers whereas in the present case, the applicant has already been regularised in the post of Bailder and his appointment to the next higher post has to be made either by way of promotion or by way of direct recruitment in accordance with the Recruitment Rules. That apart no vacant post of the Lab. Assistant is available with the respondents for considering the case of the applicant for regularisation to the post of Lab. Assistant, ~~and the~~ Tribunal cannot direct the respondents to create a post of Lab. Assistant to consider the case of the applicant.

11. For the reasons recorded above, OA is bereft of any merit and is accordingly dismissed. *Interim order granted on 21-3-2002 stands vacated.*


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)