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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 55/2002

New Delhi, this the 20<sup>th</sup> day of September, 2002

HON'BLE MRS. LAKSHMI SWAMINATHAN, V.C. (J)  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. Shri Jai Prakash S/o Late Sh. Tek Chand,  
R/o Flat No.1470, D.A. Flats,  
Gulabi Bagh, Delhi-110 007
2. Shri Damodar Singh S/o Sh. Devi Ram,  
PWD-16, Staff Quarter,  
Police Colony,  
Ashok Vihar, Delhi
3. Shri Ami Chand S/o Sh. Chandu Singh,  
R/o F-1/117, Sunder Nagar,  
Delhi - 110 093
4. Shri Babu Ram S/o Sh. Raghu Raj Singh,  
R/o K-46/5, Gali No.7,  
Kaushik Enclave, Burari,  
Delhi-110 084
5. Shri Ramanuj Kumar Singh  
S/o Shri Yogeswar Prasad Singh  
R/o H.No. N-40, Khichari Pur,  
Indira Camp, Delhi-110 091
6. Shri Jawahar Lal  
S/o Late Shri Ram Swaroop,  
R/o A-6, PWD Staff Quarter,  
Sindhora Kalan,  
Delhi-110 052
7. Shri Khushal Nath  
S/o Shri Hari Nath,  
R/o PWD-4, Staff Quarter,  
Delhi Administration Flats, Nimri Colony,  
Ashok Vihar Phase-IV, Delhi-52
8. Shri Prabhu Dutt  
S/o Shri Bhola Dutt,  
R/o Quarter No.1061,  
Sector 3, Push Vihar,  
New Delhi- 110 017
9. Shri Shankar Sharan,  
S/o Shri Tara Datt,  
R/o L-127-A, Lajpat Nagar,  
Sahibabad,  
Ghaziabad (U.P.)

... Applicants

(By Advocate : Shri R.K. Kapoor)

Versus

1. The Director General of Works,  
CPWD, Nirman Bhawan,  
New Delhi

... Respondent

(By Advocates: Shri R.N. Singh & Shri R.V. Sinha)

### O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

Nine applicants in the present OA, all Beldars in the CPWD, have filed the present OA seeking a direction to the respondents to regularise their services as Enquiry Clerks in pursuance of the Office Memorandum dated 4.7.1988 (A-1). The further prayer made is for restraining the respondents from demoting/reverting the applicants from the category/grade of Enquiry Clerk in pursuance of the Office Memorandum dated 11.10.2000 (A-2). In the relief clause of the OA, the applicants have further sought a direction to the respondents to refrain from dispensing with their services in the category of Enquiry Clerk in view of the Arbitration Award read with the orders of Delhi High Court dated 25.9.1998.

2. We have heard the learned counsel on either side at length and have perused the material placed on record as also the judgements of the various Courts made available to us during the course of hearing.

3. Briefly stated the facts of this case relevant for a proper adjudication of the OA are the following.

4. After a considerable tussle between the CPWD Management and its workers' Union, both parties agreed

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for Arbitration under Section 10-A of the Industrial Dispute Act, 1947. The Award made by the Board of Arbitrators was accepted by the workmen. However, the Union of India challenged the award by filing a Writ Petition in the Delhi High Court which decided the matter vide its judgement dated 28.1.1992. The Union of India thereupon filed a SLP in the Supreme Court which was dismissed by that Court on 12.8.1993. Thus, the High Court's judgement attained finality. Since no steps were taken by the Union of India to implement the Award, the workers' Union had filed an application in the Delhi High Court seeking a direction to the Union of India to implement the said Court's judgement dated 28.1.1992. The aforesaid application was disposed of by the Delhi High Court on 25.8.1993 with a direction to the Secretary, Ministry of Urban Development to implement the High Court's judgement by 31.9.1993. When the aforesaid judgement dated 25.8.1993 also did not have the desired effect, petitions were filed for initiating contempt proceedings against the Secretary, Ministry of Urban Development. Meanwhile, the Delhi High Court had occasion to clarify certain issues arising from their Judgement of 28.1.1992 in their order of 19.11.1996. Thereafter, Misc. Applications together with Contempt Petitions, being CMP No. 523/1997, CCP No. 87/1997 and 106/1997 alleging disobedience of the orders passed by the Delhi High Court on 25.8.1993 and 19.11.1996 were filed before the Delhi High Court. The matter was finally clarified by the Delhi High Court on 25.9.1998 (A-3). Insofar as the aforesaid

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judgement of the High Court is relevant for the purpose of adjudication of the present OA, the Court held thus :

"We find that the Court has disapproved in principle the abolition of trade test wherever it is prescribed for next promotion. We, therefore, accept the stand of the CPWD and after merger of various categories in terms of the award, if a workman has to be upgraded to the next higher category in that stream, which has an element of promotion, he has to undergo the trade test, if so prescribed."

Having recorded its finding as above, the Court observed as follows:-

"We feel that this clarification is in consonance with the two decisions of this Court rendered on 28 January 1992 and 19 January 1996 and hope that it will bring to an end all doubts and controversies in that behalf."

5. The Arbitration Award which has been dealt with by the Delhi High Court as well as the Supreme Court as above, insofar as the same is relevant for the purpose of adjudication of the present OA, provided as follows:-

"This shows that creation of posts of Enquiry Clerk is not agitated but a relief is sought in respect of those workmen who have been called upon to carry out the duties of Enquiry Clerk on all the Enquiries of CPWD and that they are not paid due pay and allowances for the job performed by them. The claim and the pleadings further reveal that muster roll employees like Beldars etc. are, deployed or called upon to do the job actually of Enquiry Clerk and such of the workmen are paid wages as admissible to either un-skilled/semi-skilled category, though they are entitled to the payment of wages (time scale of skilled

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category which is pre-revised Rs.260-400) for the jobs performed. I find from the Notification containing Minimum rates of wages that the workers doing the above mentioned job are classified as "Clerical" grade. This work is treated as against category of "clerical" within the meaning of the said notification and that the workmen concerned should be paid accordingly depending upon the qualification of matric and non-matric as the case may be. The employer is therefore duty bound to pay "clerical" grades to those workmen who are called upon to do the job of enquiry clerk. The contention of Party No.1 against para 3.7 on page 10 of their statement dated 8th April, 1987 is not correct and I agree with Shri Vats, Brother Arbitrator on this point." (emphasis supplied)

6. Respondent's failure to regularise the applicants in the post of Enquiry Clerk led to the filing of OA No. 30/2001 in which an interim order of stay was granted by the Tribunal on 4.1.2001 (A-4). In result, the applicants have continued to do the work of Enquiry Clerk to this day. Subsequently the aforesaid OA was disposed of along with another OA, being OA No. 143/2001, by an order passed by this Tribunal on 1.10.2001 (A-4A). Orders passed by the respondents dated 11.10.2000 (A-2) and dated 13.7.2000 (A-11) were under challenge in the aforesaid case. After a careful perusal of the records placed before it, the Tribunal found that the aforesaid orders, both impugned by the applicants, did not suffer from any infirmity. The Tribunal also found that the pay of the applicants for performing the duty of Enquiry Clerk had already been fixed and they had been paid arrears of pay and allowances in pursuance of the Arbitration Award. In the same order, the Tribunal further noted as follows:-

*[Signature]*

"Again there is no post of Enquiry Clerk available with the respondents against which applicants' services can be regularised. There is only the post of LDC available with the respondents which has to be filled through SSC as per the Recruitment Rules framed for the post."

7. Not satisfied with the aforesaid order of this Tribunal dated 1.10.2001, the applicants approached the Delhi High Court by filing a Writ Petition which was disposed of on 20.12.2001 (page 85 - 86 of the paper book). While disposing of the Writ Petition, the High Court observed as under:

"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 lit in their OA before Tribunal."  
(emphasis supplied)

Having observed as above, the High Court permitted the L/C for the petitioners to withdraw the petition with liberty to the petitioners to re-agitate the matter before the Tribunal by taking all available pleas.

8. The present OA has been filed on 7.1.2002 on the strength of the liberty granted by the High Court in their order of 20.12.2001, referred to in the above paragraph, seeking a direction to the respondents listed in paragraph 1 above.

9. It will be seen that after the matters relating to the Arbitration Award were finally

settled/clarified by the Delhi High Court's order dated 25.9.1998, the respondents proceeded to issue various orders on the subject of Arbitration Award. Thus, from the extract of the Circular dated 9.9.1999 issued by the respondents placed at Annexure A-10, it would appear that the work-charged Beldars like the present applicants, performing the duty of Enquiry Clerk subject to being Matriculate, till then classified as un-skilled, were given the classification of semi-skilled w.e.f. 1.1.1993 and were placed in the new revised scale of Rs.3050-4590 w.e.f. 1.1.1996. Subsequently another Circular dated 16.12.1999 (A-12) was issued in continuation of the aforesaid earlier Circular of 9.9.1999 rendering certain clarifications sought by the field Units of the CPWD relating to the implementation of the Award. The aforesaid Circular also contained a direction to the Regional Officers not to assign the job of a higher category to a worker in future under any circumstances whatsoever. In continuation of the aforesaid Circular, yet another Circular was issued by the respondents on 13.7.2000 (A-11) which, inter alia, contained the following direction issued to the Superintending Engineer, President Estate Circle, CPWD, New Delhi:-

"You are requested to enjoin upon all the officer under your Region not to assign the job of a higher category to a worker in future, in any circumstances whatsoever. Any such instance if comes to the notice of this Directorate in future will be viewed seriously and suitable disciplinary action against all such defaulting Officer will be taken for causing financial loss to the Government

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by willful disobedience of Govt. orders."  
(emphasis supplied)

10. The learned counsel appearing on behalf of the respondents has vehemently argued that the Circular dated 4.7.1988 (A-1) sought to be relied upon by the applicants in support of their case cannot find any application in the prevailing circumstances. Drawing our attention to the provisions made in the aforesaid Circular, the learned counsel has submitted that the same deals with the absorption of Muster Roll workers on the work-charged establishments of the CPWD. The applicants herein are regular Beldars and cannot be treated as Muster Roll workers. In the circumstances, they cannot be considered for regularisation in the higher category of "Enquiry Clerk" even if they are found to have worked as Enquiry Clerk for 240 days or more in two consecutive years in terms of the provisions of the said Circular. According to him, the judgement of this Tribunal in Ram Nath Singh vs. Union of India dated 5.5.1993 (Annexure-1 of Rejoinder) in OA No. 712/1991 read with the order of the Supreme Court dated 29.7.1994 (Annexure-2 of Rejoinder) whereby the SLP filed by the Union of India against the aforesaid order of this Tribunal was dismissed cannot further the cause of the applicants.

11. We have perused the judgement of this Tribunal in the case of Ram Nath Singh (supra) and also the order passed by the Supreme Court on 29.7.1994. That OA did deal with an applicant who was appointed as a Beldar and had discharged the duties of a Clerk. The relief sought in that OA was in terms of a direction

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to the respondents to draw a fair and reasonable scheme for regularisation as Clerks/Enquiry Clerks of all those Beldars who had been discharging the duties of Clerks. One Shri K.C. Sharma, Advocate, was appointed as Commissioner by the Tribunal to inspect the records of the respondents and to submit his report within a specified period. The aforesaid Advocate-Commissioner submitted his report after examining the documents relating to the years 1985 and 1986. His report, inter alia, provided as follows:-

"In conclusion, it is seen that Sh. Ramesh Chandra, Shri Ram Nath Singh and Sh. Man Singh Rajput worked as typists or as enquiry clerks or as despatch clerk during the period for which the documents were seen by me."

On the basis of the aforesaid finding recorded by the Advocate Commissioner and having regard to the provisions of the Circular dated 4.7.1988, the Tribunal in that OA directed the respondents to consider the case of Shri Ram Nath Singh for regularisation in the higher grade, namely, that of Clerk/Enquiry Clerk by having regard to the fact that he had rendered 240 days of service in each of the two consecutive years. On a careful perusal of the aforesaid order, we find that the aforesaid OA was not filed in the context of the Arbitration Award, and that the relief in question was given in that OA on the basis of the fact finding report submitted by the Advocate-Commissioner appointed by the Tribunal itself. Furthermore, the Advocate-Commissioner had found, as will be evident from the aforesaid finding

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of the Advocate Commissioner reproduced above, that the persons referred to by the Advocate Commissioner including Sh. Ram Nath Singh had actually worked as Typists or as Enquiry Clerks or as Despatch Clerks during the above stated period. It will thus be seen that whereas the applicants in the present OA were admittedly engaged in the simple task of noting down the complaints of allottees etc., Shri Ram Nath Singh, the applicant in OA No. 712/1991 had discharged duties variously as Typist/Enquiry Clerk and/or Despatch Clerk. For these reasons, the case of Ram Nath Singh (supra) is entirely distinguished. We also find that the matter regarding the Arbitration Award was not raised before the Supreme Court either. That Court had accordingly on 29.7.1994 passed a simple order as follows:-

"In the facts and circumstances of the case and in view of the finding of fact recorded by the Tribunal in favour of the respondents, we do not think that any question of law arises for determination in the present case."

The applicants cannot, therefore, derive any advantage from the case of Ram Nath Singh (supra).

12. The learned counsel for the respondent has next raised the issue of constructive res judicata by contending that the matter regarding regularisation as Enquiry Clerk having been already adjudicated by the Tribunal in OA No. 143/2001 connected with OA No. 30/2001 by providing as in the extract reproduced in paragraph 6 above, the same cannot be raised once

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again in the present OA. This is so, according to him, despite the fact that the High Court has in its order of 20.12.2001 enabled the applicants to agitate the issue of regularisation in terms of the Circular dated 4.7.1988. The matter in the present OA arises from the Arbitration Award as confirmed/modified by the High Court, and based on the same, the High Court in its aforesaid order of 20.12.2001 has clearly observed that it has not come across any of the terms of Arbitration Award directing regularisation of the petitioners (applicants) services as Enquiry Clerk. From the same order of the High Court dated 20.12.2001, it is seen that the applicants having failed to establish their claim for regularisation as Enquiry Clerk on the basis of the Arbitration Award, shifted their stand before the High Court by claiming regularisation in terms of the Circular dated 4.7.1988. Based on the aforesaid observation of the High Court, it will be in order to conclude that viewed in the context of the Arbitration Award which forms the basis of the present OA, the matter regarding regularisation had been finally settled by the Tribunal/High Court. The principle of constructive res judicata will, therefore, in our view find application in the present situation even though the applicants were enabled to pursue their remedy further by relying on the aforesaid Circular of 4.7.1988. Granting of liberty to the applicants to re-agitate the matter before this Tribunal by relying on the aforesaid Circular of 4.7.1988 cannot be equated with a direction to this Tribunal necessarily

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to go into that aspect of the matter. We have, nevertheless, dealt with the question of applicability of the aforesaid circular of 4.7.1988 in paragraph 10 above and have come to the conclusion that the same cannot give fresh lease of life to the applicants claim for regularisation.

13. On behalf of the respondents, the plea of back door entry has also been advanced by contending that no method was followed in selecting the applicants/work-charged Beldars for noting down the complaints of allottees etc. The applicants are, no doubt, Matriculates and this fact is likely to have weighed with the respondents in selecting them for noting down the complaints of allottees etc. However, there are likely to be many work-charged Beldars other than the applicants herein who were also Matriculates at the material time but they were not picked up for doing the work of Enquiry Clerk (noting down of complaints). In this view of the matter the learned counsel appearing on behalf of the respondents has argued that any concession given to the applicants (in the present OA) alone will be violative of Articles 14 and 16 of the Constitution.

14. Yet another issue raised on behalf of the respondents is regarding duality of judicial forums in which the issues regarding pay and regularisation have been raised. From the Award and its confirmation by the High Court, it is clear that the issue of regularisation as Enquiry Clerk was neither raised in

that forum nor was decided by it. The issue of regularisation was apparently first raised, as we have already noticed, in OA No. 30/2001 connected with OA No.143/2001. The Tribunal had, no doubt, dismissed the claim for regularisation in its order of 1.10.2001, but the fact remains that the applicants ought to have raised the matter regarding regularisation before the Board of Arbitration/High Court. Having failed to do so, the applicants cannot have the right to pursue the claim for regularisation before this Tribunal. On this basis also, according to the learned counsel, the applicants' claim deserves to be rejected in view of the provision made in Order II rule 2 of the CPC.

15. The respondents have also relied on the judgements rendered by this Tribunal in OA No. 431/1996 (M. Chandrasekharan and Anr. vs. CPWD), OA No. 917/1999 with OA No. 24/1999 (Harish Chander Kala Vs. CPWD) and in OA No. 1883/1997 (Shri Dharma Vir vs. CPWD) decided respectively on 1.3.2000, 30.10.2000 and 11.12.2000. The applicants in all these OAs were Beldars seeking, inter alia, the relief of regularisation in the post of Enquiry Clerk in circumstances similar to the circumstances prevailing in the present OA. Their claims for regularisation have been rejected in all these OAs though the relief of higher pay for the period the applicants in these OAs worked as Enquiry Clerks was granted. In OA No. 431/1996, the Tribunal had occasion to notice the case of Ram Nath Singh Vs. UOI (supra) but went on to

hold that that case will not apply for the reason that the Tribunal in that case (Ram Nath Singh (supra) ) had failed to notice that regularisation to the post of Enquiry Clerk/Clerk could take place only in accordance with the Recruitment Rules. In the aforesaid OA, being OA No.431/1996, the Tribunal had found support for its aforesaid view in the Full Bench Judgement in Shri Jetha Anand and Others v. Union of India and Others. In other words, the order of this Tribunal in Ram Nath Singh (supra) was found by the Tribunal in the aforesaid case (OA No.431/1996) to be per incurium.

16. We have in an earlier paragraph noted that after the settlement of all the issues arising from the Arbitration Award by the judgement of the High Court dated 25.9.1998, the respondents have issued a number of Circulars for implementing the Award as confirmed by the High Court. The relevant Office Memorandums dated 9.9.1999, 29.9.1999, 16.12.1999 and 11.5.2001 have been placed on record at Annexure R-1 Colly. From the Office Memorandum dated 11.5.2001 it is clear that, according to the respondents, insofar as the work-charged Beldars are concerned, no action was to be taken beyond making the payments of difference of wages for the period the applicant/work-charged Beldars have worked as Enquiry Clerks by noting down the complaints of allottees etc. In other words, it was made clear that there was no obligation cast on the respondents to continue the applicants/work-charged Beldars in the positions held

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by them while they partially discharged the duties of Enquiry Clerks by noting down the complaints. The aforesaid circular also contained a clear direction to the Officers of the respondent-department not to assign the job of higher category to a worker in future. All these instructions are, according to the respondents, in consonance with the Award as modified by the High Court and, therefore, no fault can be found with the respondents' decision to dis-continue the services of the applicants/work-charged Beldars as Enquiry Clerks. This would imply that the applicants would thereupon continue to work as work-charged Beldars.

17. The respondents have laid great stress on the fact that there is no post of Enquiry Clerk in their Offices, and that the post of Clerk/LDC which does exist has proper Recruitment Rules which have to be followed before anyone is appointed as Clerk/LDC. The applicants herein, who are work-charged Beldars, cannot, in the circumstances, be regularised as Enquiry Clerk nor can they be appointed as Clerks/LDCs. According to them, any attempt to regularise applicants as Clerk/LDC would open flood gates for back door entry in utter violation of Articles 14 and 16 of the Constitution. Furthermore, the respondents have no policy or scheme for the regularisation of Beldars or any other work-charged Group 'D' employees as Enquiry Clerk. The correct position, according to them, is that the applicants were appointed as Beldars in the work-charged

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establishment and never as Enquiry Clerk. Subsequently, however, they were engaged for performing duties of noting down the complaints of allottees etc. and for this reason they were designated, though wrongly, as Enquiry Clerks. In the Arbitration Award also there is no direction to the effect that the applicants/work-charged Beldars should be permitted to continue to perform the duties of Enquiry Clerk in the way they have been performing the said duties. An Enquiry Clerk, according to the learned counsel for the respondents, would normally perform many more duties in addition to noting down of complaints of allottees etc. The applicants in the present OA, however, performed the single duty of noting down of complaints and were neither required to do anything more in that regard nor they actually did anything else besides noting down the complaints. For this reason also, according to the learned counsel, it cannot be successfully argued that the applicants performed the duties of Enquiry Clerk. Extracts of the CPWD Manual Vol.III 1984 Edition relating to work-charged establishments have been filed on behalf of the respondents to show that there is no post of Enquiry Clerk in the said Establishments. Extracts have also been filed from the same Manual Vol.I to show that there is no post of Enquiry Clerk in the regular Establishments either. According to the learned counsel appearing for the respondents, the extract of CPWD Manual relating to the Work-charged Establishments filed on behalf of the applicants forms part of 1972 Edition which is much older. The said

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extract cannot., therefore, be relied upon to contend that the post of Enquiry Clerk continues to exist in the Work-charged Establishments of the CPWD. The Office Memorandum dated 16/23 April, 1991 (A-8) filed on behalf of the applicants also does not bring out the fact that the posts of Enquiry Clerk existed at the material time. The said Office Memorandum, on the other hand, shows that a case for creation of the posts for Enquiry Clerk was yet to be made out. Viewed thus, it has to be held that the post of Enquiry Clerk has not been in existence in the work charged establishment nor in the regular establishment of the CPWD during the period in question. That being so, we are inclined to agree with the respondents that for this reason also the applicants cannot be considered for appointment/regularisation in the post of Enquiry Clerk/Clerk.

18. In the relief clause of the OA, the applicants have relied on the High Court's order dated 25.9.1998 for seeking a direction to the respondents not to dispense with the services of the applicants in the category of Enquiry Clerks. In the rejoinder filed on their behalf again the plea advanced is that the category of Enquiry Clerk/semi-skilled was conferred on them by the High Court. We have perused the relevant papers on record and from the portion of the High Court's Order dated 25.9.1998 reproduced in paragraph 4 above that it does not contain any direction in favour of the applicants' continuance as Enquiry Clerks. Conferment of the category of Enquiry

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Clerk, even if borne out by reading the Arbitration Award and the orders of the High Court cannot assist the applicants. Work charged Beldars performing the duties of Enquiry Clerk with Matriculate qualification were, no doubt, classified as semi-skilled workers by the respondents' Office Memorandum dated 9.9.1999. This would, however, only imply that as long as the work charged Beldars/applicants worked as Enquiry Clerks, they would be entitled to payment of wages in the scale of pay shown in the Annexure to the aforesaid Office Memorandum. There is no implication therein that having been categorised as semi-skilled as above, the respondents will be obliged consequentially to regularise them in the semi-skilled post of Enquiry Clerk. The fact of non-existence of posts of Enquiry Clerk will still come in the way thereby defeating the claim of the applicants for regularisation as Enquiry Clerk.

19. We have also perused the judgements of this Tribunal respectively dated 30.5.1998 (OA No.2355/1988) and dated 28.9.1998 (OAS No.440/1995) filed on behalf of the applicants in support of the applicants' claim for regularisation as Enquiry Clerk. These cases are distinguished. The applicant in OA No. 2354/1988 was a Commerce Graduate who discharged the duties of an Enquiry Clerk, even though he was appointed as a Beldar. There is no mention in the Tribunal's Order about the nature of duties performed by the applicant as Enquiry Clerk. It has to be presumed, therefore, that the applicant in the

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aforesaid OA did more than merely noting down the complaints of allottees etc. Moreover, the claim in the aforesaid OA did not arise in the back-ground of the Arbitration Award as in the present case. Similarly, in OA No.440/1995, the applicants had performed the duties of a Clerk/Enquiry Clerk. As Clerk/Enquiry Clerk, the applicants in that OA did typing, making of entries in the diaries and also despatched communications, prepared extracts, issued materials etc. Unlike in the present OA in which the applicants/work charged Beldars were engaged only to note down the complaints of allottees etc. Further this case also does not arise in the back-ground of the Arbitration Award which has given rise to the present OA. The third OA relied upon by the applicant, being OA No. 961/1986, decided by the Tribunal on 7.1.1994 also cannot assist the applicants is the present OA as this OA is distinguished on several grounds. The learned counsel appearing on behalf of the respondents has also drawn our attention to the details of over time allowance paid to the applicants in the present OA in their capacity as Beldars. The amounts drawn by the applicants as over time allowance have been shown in the statements filed as Annexure AR (Colly) with the additional affidavit filed on behalf of the respondents. This would show that the applicants have continued to work essentially as Beldars and cannot for this reason claim the benefit of regularisation as Enquiry Clerk by relying on the Circular dated 4.7.1988 or otherwise.

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20. For all these reasons brought out in the preceding paragraphs, we find ourselves in agreement with the contentions raised on behalf of the respondents and do not find any substance in the present OA. We are, therefore, unable to grant the relief claimed in the OA. We have, however, noted that the respondents themselves have expressed the view that the post of an Enquiry Attendants is a must and that accordingly the matter regarding creation of posts of Enquiry Attendants was under consideration. In the peculiar circumstances of the present case, even if we are not prepared to grant the reliefs sought herein, we would still be inclined to dispose of the present OA in the following terms.

20(A). The respondents will consider the matter regarding creation of the posts of Enquiry Attendant expeditiously and take a decision thereon within a maximum period of four months from the date of receipt of a copy of this order. If it is decided to create the post of Enquiry Attendant, the respondents will frame proper Rules for recruitment to the post. Having done that, the respondents will permit the applicants/work charged Beldars to participate in the recruitment process as and when notified by granting them relaxation in age by the number of years the applicants have discharged the duties of Enquiry Clerk by noting down complaints. Their participation in the recruitment process will be subject to the applicants having been appointed as work charged Beldars within the prescribed age limit for that post. No other concession will be extended to the applicants.

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20(B). The learned counsel for the respondents had argued that there would be other Matriculate work charged Beldars who were not picked up for doing the work of an Enquiry Clerk as in the case of the applicants. In order to ensure equality of treatment, those Matriculate work charged Beldars, who were not then picked up, shall also be considered for participation in the recruitment process for the post of Enquiry Attendants by granting age relaxation to them as in the case of the applicants.

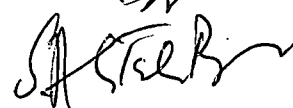
20(C). It will be seen that we have not been able to grant any of the main reliefs sought by the applicants. In sub clause 'd' of clause 8 of the OA, the applicants sought directions for granting any other relief as deemed fit and proper in the facts and circumstances of the case. The relief contained in the paragraph 20(A) above has been granted by keeping in view the aforesaid relief sub-clause. We have felt inclined to grant the aforesaid relief fully realising that its materialisation is both distant and remote by having regard to the special submission made on behalf of the applicants that having discharged, even if partially, the duties of an Enquiry Clerk for several years, in some cases for decades, the applicants would find it immensely difficult to discharge the duties and responsibilities attached to the post of a Beldar and further on being reduced to the status of a Beldar, their social standing will also suffer a

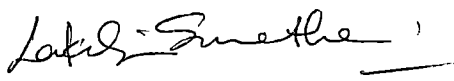
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decline. With this in view, we are also inclined to direct the respondents to desist from engaging other matriculate work charged Beldars for performing the duties of an Enquiry Clerk or for that matter of an Enquiry Attendant after the applicants' services as Enquiry Clerk have been dispensed with. Nothing will, however, stand in their way if the respondents wish to continue to utilise the services of the applicants as Enquiry Clerks until the posts of Enquiry Attendants have been created, by paying the applicable salary as hitherto. It is clarified that if the respondents decide to do so, the applicants will not thereby acquire any right to be considered for appointment as Enquiry Attendant on a preferential basis as and when the posts of Enquiry Attendant are created. They shall be given, as already provided, the benefit of age relaxation only at the relevant time.

21. In the light of the foregoing the reliefs prayed for are not granted and the OA is disposed of in the aforestated terms. No costs.

22. Interim order passed on 8.1.2002 stands vacated.

  
(S.A.T. RIZVI)  
Member (A)

  
(MRS. LAKSHMI SWAMINATHAN)  
Vice Chairman (J)

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