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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No. 709 OF 2002

New Delhi, this the 1<sup>st</sup> day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER  
HON'BLE SHRI BHARAT BHUSHAN, JUDICIAL MEMBER

1. Kamal Singh,  
S/O Shri Sadhu Singh,  
R/O Quarter No. 42,  
Road No. 6,  
Andrewz Ganj,  
New Delhi.
2. Shiv Charan,  
S/o Shri Chandika Prasad,  
R/o C-8/339, Sultan Puri,  
Delhi.

Both are employed as Chowkidars in the  
Council of Scientific And Industrial Research,  
CSIR Complex,  
Pusa,  
New Delhi

.....Applicant

(By Advocate : Shri B.B.Raval)

Versus

1. Council of Scientific and Industrial Research,  
through  
the Director-General,  
Rafi Marg,  
New Delhi.
2. Shri Jagdish Chand,  
working as Driver in  
Council of Scientific and Industrial Research,  
C/O Respondent No. 1.

.....Respondents

(By Advocate : Ms. Nilima Thakur)

ORDER

SHRI R. K. UPADHYAYA, ADMINISTRATIVE MEMBER :-

This application under section 19 of the  
Administrative Tribunals Act, 1985 has been filed  
claiming the following relief:-

"1) To quash the impugned Office Memoranda  
dated 21st November, 2001 at Annexures "A" and "B" as  
being illegal, arbitrary and issued with a malafide  
intention to teach them a lesson for having dragged  
the Respondents to the Court of Law.

*Upadhyaya*

II) Consequent to relief at (I) being granted, to direct the respondents to regularly appoint the applicants as Staff Car Drivers from the date they qualified all the tests and were made to work as Staff Car Drivers officially.

III) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case."

The OMs dated 21.11.2001 at Annexures "A" and "B" are to the effect that the applicants have been "directed to report for duty as Chowkidars to Watch and Ward Asstt., CSIR Complex with immediate effect."

2. It is stated by the learned counsel of the applicants that the applicant No.1 joined the service of the respondent No.1 as Chowkidar on 25.4.89 whereas the applicant No.2 joined as a Chowkidar on 3.12.87. The grievance of the applicants is that they had been performing the duties of the Staff Car Drivers. Therefore, they could not be reverted to the post of Chowkidars. On the other hand, it is claimed that they should have been regularised as Staff Car Drivers.

3. The learned counsel of the applicants stated that the impugned orders dated 21.11.2001 of posting as Chowkidar is nothing but malafide exercise of power by the respondents in as much as the applicants had earlier filed OA No.320/2000 whereby the Tribunal had given directions in favour of the applicants. Since those directions were not complied with by the respondents, the applicants also filed contempt petition against the respondents. So it is in this background that the present order is in exercise of malafide powers of the respondents.

*Amrinder Singh*

4. The learned counsel of the respondents stated that the applicants were not reverted as Chowkidars. They were allowed to work as Staff Car Drivers temporarily as and when required. Therefore, there is nothing wrong in passing the impugned order dated 21.11.2001. The learned counsel also stated that the matter relating to the regularisation of the applicants as Staff Car Drivers was the subject matter of earlier OA No.320/2000. Therefore, the present application is barred by the principle of Res Judicata and should be dismissed on that ground alone. However, the learned counsel explained that the applicants have never been appointed as Staff Car Drivers. Therefore, the question of their reversion or regularisation as Staff Car Drivers does not arise.

5. The learned counsel of the applicants in the rejoinder submitted that the OMs dated 21.11.2001 give the applicants a fresh cause of action and, therefore, the respondent cannot take the plea that the matter is hit by the principle of Res Judicata. He also stated that the respondents have not pointed out that as to why the services of the applicants were not used as Staff Car Drivers even though they had been satisfactorily performing their duties as Staff Car Drivers including over-time duties for more than a decade.

6. We have heard the learned counsel of both parties and have perused the materials available on record.

*Amrinder Singh*

7. OA No.320/2000 was filed by both these applicants claiming the following reliefs:-

"I) To direct the respondents to pay the applicants their salary and allowances as Staff Car Drivers from the days they were deployed to drive Staff Cars officially in the month of May, 1989 and continue to pay the same hereinafter on every first of the month;

II) Consequent to relief at (I) being granted also direct the respondents to pay the difference of pay and allowances between the post of a Staff Car Driver and that of Chowkidar to the applicants within 18% interest per annum till realisation;

III) To direct the respondents to regularly appoint the applicants as Staff Car Drivers from the date they qualified all the tests and were made to work as Staff Car Drivers officially;

IV) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed just and proper in the light of the facts and circumstances of the case."

8. From the perusal of the above, it is clear that the applicants had sought a direction to the respondents to regularly appointed them as Staff Car Drivers as they qualified all the tests and worked as Staff Car Drivers. As can be seen from the reliefs claimed in the present OA, the applicants have sought the same reliefs as follows:-

"II) Consequent to relief at (I) being granted, to direct the respondents to regularly appoint the applicants as Staff Car Drivers from the date they qualified all the tests and were made to work as Staff Car Drivers officially."

*(Signature)*

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A/B

9. In our considered view, the present OA so far as it relates to regular appointment of the applicants as Staff Car Driver is hit by the provisions relating to doctrine of Res Judicata or in any case Doctrine of Constructive Res Judicata as has been held by the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Bombay vs. T.P. Kumaran 1996(6) SCALE 403.

In case, the applicants were aggrieved by the order dated 10.5.2001 in OA No.320/2000, they could have taken recourse to legal remedy available to them. Since the relief regarding regular appointment of the applicants as Staff Car Drivers were the subject matter in the earlier OA No.320/2000, the same cannot be reagitated in this OA.

10. There is another reason for not allowing the applicants to claim this relief in this OA as the applicants have never been regularly appointed as Staff Car Drivers. The whole case of the applicants as pointed out by the learned counsel of the applicants is based only on the letter dated 6.9.89 (Annexure-A2 to OA No.320/2000) which reads as follows:-

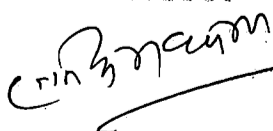
"To,

The Civil Surgeon,  
Dr. Ram Manohar Lohia Hospital,  
New Delhi.

Sub: Medical Examination.

Sir,

I am directed to state that Shri Kamal Singh, Chowkidar of this office has been selected for appointment as Staff Car Driver for driving the Staff Car in the leave vacancies as and when required by the Transport Cell of our office.



It is requested that the above person may be examined for physical fitness for the post of Staff Car Driver as required under SR 4 of the P & I compilation of Fundamental Supplementary Rules. Your report stated that he is fit to hold the post of Staff Car Driver may please be sent to this Office at an early date."

11. Similar letter is stated to have been issued in the case of Applicant No.2 also. In order to appreciate the contents of this letter, we have to see as to why this letter was issued. The applicants represented before the respondents that they were knowing driving and had valid driving license. Therefore, they were interested in working as Staff Car Driver as and when required. In view of their request, the respondents got their driving skilled tested. After they were found skillful in driving vehicle, the letter dated 6.9.89 was issued to find out whether the applicants were fit to work as Staff Car Driver. After they were found medically fit, they were allowed to drive the staff cars of the respondents. Merely because the applicants were allowed to work as Staff Car Drivers, they could not claim to have become eligible for regular appointment as Staff Car Driver. Nothing has been brought on record to suggest that the applicants went through the normal recruitment procedure for being selected as Staff Car Driver as per prescribed rules. The Hon'ble Supreme Court in the case of Dr. Arundhati Ajit Paragonkar Vs. State of Maharashtra & Others 1994 (5) SLR 234 have held that eligibility and continuous working for howsoever a long period could not be permitted to over-reach the law. Therefore, even on merits, the applicant cannot be held to be eligible to hold the post of Staff Car Driver as claimed. It may

*Amritha*

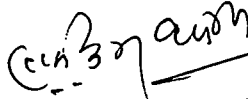
be mentioned that this Tribunal had earlier directed the respondents to clarify whether the applicants worked only during the leave period or not. The respondents have filed affidavit dated 14.11.2003 wherein it has been stated that S/Shri Kamal Singh and Shiv Charan joined the respondent CSIR as Chowkidar w.e.f. 3.12.1987 and 25.4.89 respectively. As one of the applicants, Shri Kamal Singh had requested the respondent CSIR vide his application dated 30.6.1989 (Annexure-1) for giving him a chance to drive the vehicle as and when required, the applicant Shri Kamal Singh was allowed to work as Staff Car Driver as per his request during the course of suspension of one Shri Harpal Singh from 5.9.89 to 12.2.91. It is also stated by the respondents that due to shortage of Staff Car Drivers, the applicant Kamal Singh continued to discharge the duties of the driver until 19.11.2001 when he was repatriated back to the original post of Chowkidar. It has also been stated that the services of Shri Shiv Charan applicant No.2 Chowkidar who was also holding the driving license and cleared the driving test conducted by CRR1, were utilised for driving the Staff Car No. DIA 5842 and any other staff car as and when required. Honorarium @ Rs.4/- per day, as admissible under rules, was also paid to him. He continued to perform the duties of Staff Car Driver until 19.11.2001 when his services as Staff Car Driver were no longer required by the respondents. The respondents further stated that at present there were six vehicles and six regular drivers and there is no scope at all for continuing the applicants in the capacity of staff car drivers. On the facts as brought out by the respondents, it is clear that the

Conclusion

applicants performed the duties of Staff Car Drivers even though they were employed as Chowkidars. By order dated 0.5.2001 in OA No.320/2000, this Tribunal directed the respondents to pay the applicants the difference of salary and allowances of the post of Staff Car Driver minus the wages which have already been paid to them as Group "D" staff with effect from the date they have been performing the duties of Staff Car Driver.

12. On these facts and reasons stated hereinbefore, we do not find any justification to direct the respondents to grant the reliefs as claimed by the applicants. In the result, this OA is dismissed without any order as to costs.

  
(BHARAT BHUSHAN)  
JUDICIAL MEMBER

  
(R. K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

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