

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.564/2002

New Delhi this the 6th day of November, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. All India CPWD (MRM) Karamchari Sangathan
through its President
4823, Balbir Nagar Extn.
Gali No.13, Shahdara,
Delhi-32.

2. Ram Kirpal Yadav
S/o Sh. Ram Krishna Yadav
C/o All India Central P.W.D.(MRM),
Karamchari Sangathan,
4823, Balbir Nagar Extn.
Gali No.13, Shahdara,
Delhi-32.

.. Applicants

(By Advocate Miss Shilpa Chauhan, proxy for Sh. Naresh Kaushik)

Versus

1. D.G. of Works CPWD,
Nirman Bhawan,
New Delhi.

2. The Superintending Engineer,
Coordination Circle (Elect),
East Block, R.K.Puram,
New Delhi-66.

3. The Executive Engineer,
P.W.D. Elec. Div. No.3.
(Govt. of Delhi)
J.B.Titoo Marg,
Opp. Central School,
Andrews Ganj,
New Delhi-49.

4. Union of India through
Secretary,
Ministry of Urban Development and
Poverty Alleviation,
Nirman Bhawan,
New Delhi.

... Respondents

(By Advocate Ms. Renu George)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant No.2 through this OA seeks
regularisation on the post of Wireman with all
consequential benefits as well as arrears of wages.

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2. Applicants were employed on Muster Roll in the year 1982 and continued to have worked till 2000. Applicant is an OBC and had qualified industrial training and the trade test held in July 1976 for the post of Electrician. Applicant also possesses ITI certificate in the Electrician Trade.

3. Applicants continued to work as Assistant Wiremen on muster roll. By a notification issued in August, 1988 by the CPWD on the basis of the decision of the Apex Court dated 17.1.86 in Surinder Singh v. CPWD it has been decided to scrutinise the service record of all eligible muster roll workers for being absorbed in workcharged establishment.

4. Applicants possessed licence in 1997 in view of the fact that the arbitration award issued in 1998 was modified by the High Court of Delhi in WP-2792/88 the posts of Assistant Wireman and Wireman were merged as Wireman and the merger was made applicable. In this view of the matter as applicant contends to have fulfilled the eligibility criteria for regularisation it is contended that under 25% quota for direct recruitment he should be considered and also in 75% for promotion as Wireman. Learned counsel of applicant states that applicant is entitled for regularisation with all consequential benefits on the corollary of 'equal pay for equal work'.

5. In the reply respondents' counsel vehemently opposed the contentions and stated that applicant had in view of 1988 notification for absorption for bringing in muster roll employees to workcharged establishment has not made any effort. As in view of the award modified by the

High Court corrigendum dated 10.6.97 made applicability of merger only in respect of workcharged category. As applicants are not work charged employees and are on muster roll he cannot be considered for appointment as Wireman as per the recruitment rules. Moreover, learned counsel for respondents contended that applicant No..2 got a licence only on 1.5.97 which is to be renewed after every three years.

6. Learned counsel for respondents also relied upon the decision of this Court passed in OA-2317/2002 decided on 14.5.2003 in All India CPWD Karamchari Sangathan v. The Director General, CPWD and Others wherein the contention after accord of temporary status for regularisation on the similar pleas raised herein has been turned down by Division Bench. As applicants were given temporary status they are not entitled to be regularised against Group 'D' posts.

7. Applicants in the rejoinder have reiterated his pleas taken in the OA and stated that earlier Wireman has to be appointed from the feeder cadre of Assistant Wireman.

8. I have carefully considered the rival contentions of the parties and perused the material on record. In 1998 in view of the decision of the Apex Court in Surinder Singh's case (supra) muster roll workers who have completed 240 days service were on option are to be absorbed in workcharged establishment. As no option has been accorded by applicant it is too late to raise the grievance which is time barred and suffers from the vice of delay and laches.

9. However, I find that on account of having worked for 240 days in a year applicants were accorded temporary status w.e.f. 1.9.1993 as per the DOPT Scheme which stipulates absorption of temporary status workers in regular establishment in Group 'D' posts subject to suitability. As per the recruitment rules applicants are eligible to be considered for Group 'D' post. However, not being a workcharged employee merger of post of Assistant Wireman into Wireman the recruitment rules for the post provide 25% recruitment through direct recruitment and 75% by promotion on the basis of seniority-cum-fitness. Feeder cadre post is Khalasi with at least 10 years of service and had also passed the training course.

10. Nothing precludes applicants to apply in the aforesaid direct recruitment quota for the posts of Wireman.

11. In so far as continuance of applicants on temporary status for more than 10 years is concerned, absorption depends upon vacancies and eligibility of candidate. It is very unfortunate and it is an irony of fate that muster roll employees had been continuing on temporary status for the last more than 10 years and are still to be regularised in Group 'D' posts for want of any Scheme. This has almost washed off their entire service rendered from 1994 onwards to be counted towards qualifying service. In a welfare State beneficial legislation would apply to the benefit of such employees. However, in absence of such Scheme the regularisation of applicants cannot be possible as not being workcharged employees they are not eligible as a feeder category for promotional posts

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of Wireman despite performing work of Assistant Wiremen and having eligibility as per the recruitment rules and know how of the trade by passing the trade test etc. As held by the Apex Court in State of Haryana v. Piara Singh, 1992 SCC (L&S) 825 that if a casual labour is continued for long years there arises a presumption as to availability of posts as well as work with the respondents, which cannot be lost sight of.

12. In the result, for the foregoing reasons, though the effect merger would not be applicable in cases of applicants, OA is disposed of with a direction that it is open for applicants to apply in the direct recruitment quota of 25% and the respondents shall consider framing a Scheme keeping in view the length of service of applicants their eligibility for the posts and technical know how acquired for the purposes of their regularisation towards regular establishment so that they may not be deprived of their qualifying service and other attendant benefits. As it is a policy decision I leave it to the Government to take a decision and accordingly if so advised consider regularisation of applicants as per rules and instructions on the subject. No costs.

S. Raju
(Shanker Raju)
Member (J)