

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2525/2002

NEW DELHI THIS 16TH DAY OF NOVEMBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. Jagdish S/o Naidan
R/o 38 Ring Road,
New Delhi
2. Mahesh Chand S/o Fakir Chand
C/o Jagdish.
3. Karan Singh S/o Ratiya Singh
C/o Jagdish
4. Santra W/o Hori Singh
House No. B/38
Gali No. 4, Block B, Bhaijan Pura,
New Delhi.

.....Applicants

(By Rupinder Ghuman, Advocate with Ms Anu Mehta, Advocate)

VERSUS

1. Union of India through
Secretary, Ministry of HRD, Shastri Bhawan,
New Delhi
2. A.S.I. through
Director General, Janpath,
New Delhi
3. Superintending Archaeologist, ASI,
Delhi Circle, Safdarjung Tomb,
New Delhi.

.....Respondents

(By: Shri R.P. Agarwal, Advocate)

O R D E R

BY: HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Applicants in this OA are seeking regularisation as Sweepers as well as placement of restraint on the respondents for engaging outsiders as Sweepers at their cost and prejudice.

2. Heard Ms Anu Mehta with Sh. Rupinder Ghuman for the applicants and Sh. R P Agarwal for the respondents.

h

X

-2-

3. Applicants who have been working with ASI & its circle as Sweepers for more than 12 years and have been granted temporary status, in terms of DoPT's scheme of 10.9.93, were directed to appear for the interview on 26.3.2002, but joined that others have also been called and were likely to be appointed. While the applicant had represented against the above, the respondents have taken the plea that the former were shown as Beldar in the seniority list 1994 and therefore cannot be regularised as Sweepers. This was improper as the respondents had themselves issued work certificate to them as Sweeper. Hence this O.A.

4. Grounds raised in this OA are:-

- i) the responsibility of the respondents to act as model employer which they have failed to do;
- ii) action of the respondents in making the applicants, who are Sweepers to work as Beldars and granting them temporary status which has come in the way of their regularisation;
- iii) impropriety committed by the respondents in calling outsiders for interview when the applicants were available and 75% of the vacancies should have gone to temporary status holders; and
- iv) action of the respondents in calling the applicants for interview for Sweepers, at the same time holding that they cannot be given the job as in the seniority list they are shown as beldars.

In the above scenario the OA should succeed, plead the applicants.

5. Respondents point out in their reply that they were taking action for filling up 25 posts of Sweepers in Archaeological Survey of India by inviting applications from

8

-3-

Surplus Cell, Central Employment Exchange and from Casual Worker having temporary status. As the applicants, though were casual workers holding temporary status, and were placed in the seniority list of 1994 as Beldars and Coolies, which was not disputed or objected to by them, they can claim regularisation only against the vacancies of Beldars/Coolies, but not of Sweepers. While DoPT's scheme of 1993 provided for filling up of two out of every three vacancies in Group 'D' cadre from the Casual workers with temporary status, their claim was secondary to regular staff rendered Surplus. Therefore, 16 of the 25 posts of Sweepers sanctioned had to be filled up from Casual workers (Sweepers) with temporary status, along with those from the surplus cell. That precisely had been done by the respondents. The applicants have been granted temporary status but only as coolies/Beldars and cannot therefore ask for regularisation as Sweepers which they are claiming. The experience certificates, if any showing the applicants as Sweepers, would be of no avail as they relate to the period before the conferment of temporary status, which have been granted to them only as Beldar/Coolies. That being the case, the applicants can have no case, according to the respondents.

6. In the rejoinder as well as during oral submission made through Ms Anu Mehta and Sh. Rupinder Ghuman, the applicants re-assessed their claim for regularisation, as they have already been granted temporary status in terms of DoPT's scheme dated 10.9.93. In fact 25 posts of Sweepers were required to be filled up in 1997 itself but the respondents have taken action to do so only in 2002 and that too by denying the opportunity to rightful claimants like the applicants - Respondents" should have exercised their power even to relax rules in the case of applicants as they had been working to

---4

-6-

the total satisfaction of employees. Having regularised as many as 42 casual workers with temporary status in 1994, the applicants whose names appear in the seniority list also should merit consideration for regularisation. It is also submitted that the applicants are working against multifunctional posts as they have been also performing work as Sweepers, though shown as Beldar/Coolies and the respondents themselves have given them work certificate as Sweepers earlier. The present attempt by the respondents was only a denial of justice to the applicants. On the other hand Sh. R P Aggarwal appearing for the respondents submitted that the applicants case could not at all be endorsed in law as they were only beldars and coolies with temporary status could be regularised only ^{against} those posts when they became available and they cannot be considered for regularisation as Sweepers.

7. I have carefully deliberated upon the rival contentions. While the applicants alleged that their claim for regularisation has not been considered illegal, the respondents urged that the applicants cannot make ~~out~~ such claim. Anticipated facts in this ^{case} are that the applicants, all four of them are casual workers who have not granted temporary status as Beldars/coolies in terms of DoPT's Scheme of 10.9.93. They are also placed in the seniority list of casual workers like Sweepers, Beldars and coolies who have been granted temporary status. The applicants pleaded that these are multifunctional jobs and the mere fact that they have been shown in the seniority list as Beldar and coolies cannot deny them the regularisation as Sweeper. As in fact they had been given work ^{certificates which are} ~~are that~~ showing them as Sweeper earlier. The

respondents do not accept it. As according to them posts which are specifically designated can be permitted to be filled up on regularisation only from those casual workers who have given temporary status in that particular trade i.e. only casual workers/sweepers with temporary status can be considered for regularisation against creative vacancies of sweepers. This, to my mind is stretching the legal position a bit too far for comfort when the respondents have prepared and published seniority list of casual workers who have obtained the temporary status including Sweepers/Beldars/coolies etc. it should normally be presumed that this would have to form the basis for regularisation as and when vacancies in Group "D" for the above posts arise. If they had wanted to ensure that regularisation of those temporary status would be done only categorywise, seniority list should have been separately maintained. Not having been done so the respondents are duty bound to order regularisation from the seniority list strictly in accordance with the seniority irrespective of difference in trades specially as there is no much of difference for in the trade, therefore the applicants are correctly entitled for regularisation against the newly created 25 vacancies if any of their juniors in the list are sought to be accommodated or are sought to be recruited from outside. Merely because they are shown as Beldar/Coolie in the seniority list would not deny them consideration for regularisation against the vacancies of Sweepers and denial of the above would be injustice. If any person placed below the applicants in the seniority list issued by the respondents in 1994 has been considered/selected for regularisation, irrespective of trade the applicants claim shall get priority over such juniors. At the same time the applicants cannot claim priority over the regular staff who had been rendered surplus and who have to be provided

alternate employment. If the respondents have selected any of those released from Surplus Cell the same cannot be called in question.

8. In the above view of the matter the OA succeeds to a substantial extent and is accordingly disposed. The respondents are directed to consider the case of regularisation of the applicants against the newly created 25 vacancies, strictly in accordance with their relative position in the seniority list issued by the respondents themselves in 1994 in preference to those who are their juniors but are preferred as they are shown as Sweepers. This order would not however, come in the way of anyone who has been selected from the Surplus Cell. This exercise shall be taken up and completed within three months from the date of receipt of this order. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/