

30

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.127/2002

This the 1st day of May, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

1. Lakhi Ram S/O Chater Singh,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 2. Chander Shekhar S/O Girdhari Lal,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 3. Manjit Kumar S/O Lalita Prasad,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 4. Kapleshwar Lal Karan S/O Jai Dev Lal Karan,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 5. Kunwar Pal S/O Sohan Lal,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 6. Jagdish Ram S/O Bhartu Ram,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 7. Naveen Chander Pandey S/O Hera Balab,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 8. Ram Khilari S/O Chandan Singh,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 9. Bahadur Singh S/O Sher Singh,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
 10. Hirday Ram S/O Chamaru,
Beldar-cum-Enquiry Clerk,
President Estate Division, CPWD,
New Delhi.
- ... Applicants

(By Shri R.K.Kapoor, Advocate) .

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-versus-

1. Director General of Works,
CPWD, Nirman Bhawan,
New Delhi. ... Respondent
(By Shri K.C.D.Gangwani, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Member (A) :

Applicants, 10 in number, though initially appointed as Beldars have been working as Enquiry Clerk for the last several years. Through this OA, they have sought regularisation of their services as Enquiry Clerks in terms of memorandum dated 4.7.1988 (Annexure A-1). They have also sought that respondents be restrained from reverting applicants from category/grade of Enquiry Clerks in terms of O.M. dated 11.10.2000 (Annexure A-2).

2. Applicants had earlier filed OA No.2237/2000 claiming regularisation. The same was dismissed holding that the arbitration award did not direct regularisation of services. Actually it was stated that the award did not contemplate the post of Enquiry Clerk as being in existence to which applicants could claim regularisation. Applicants then took the matter to the Delhi High Court in CWP No.6552/2001 which was dismissed as withdrawn with the following observations :

".....Their counsel Mr. Kapoor again harped on Arbitration award dated 31.1.88 to claim regularisation of services for them.

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

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- 3 -

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 it in their OA before Tribunal.

Faced with this L/C for petitioner prayed for withdrawal of this petition with liberty to petitioners to reagitate the matter before Tribunal by taking all available pleas.

Petition is accordingly dismissed as withdrawn with liberty prayed for granted. No plea of limitation shall come in the way of petitioners in approaching the Tribunal again and meanwhile respondents are directed to maintain status quo as on today in respect of their service status for three weeks from today."

3. The learned counsel of applicants contended that vide Annexure A-1 dated 4.7.1988 respondents had issued instructions relating to absorption of muster roll workers on the work charged establishment in CPWD. Such muster roll workers who had rendered 240 days' service each in two consecutive years in a higher category are to be regularised in higher category. Secondly, the learned counsel has brought to our notice the award dated 31.1.1988 made under Section 10-A of the Industrial Disputes Act, 1947 regarding demand of the CPWD workers' union with regard to re-categorisation/re-classification of the work charged establishment of CPWD. This award was accepted by the workers. However, the Union of India challenged it in a Writ Petition before the Delhi High Court. Judgement dated 28.1.1992 of the Delhi High Court was carried to the Supreme Court in SLP which was dismissed on 12.8.1993. The High Court's judgment attained finality. The matter was again taken up by the High Court of Delhi in CCP No.87/1997 and 106/1997 (CMP No.523/1997) alleging non-implementation of the orders

passed by the High Court on 25.8.1993, etc. The matter was finally clarified by the High Court on 25.9.1998. It was held that the Court did not approve in principle an automatic upgradation of a workman from one category to another, like from unskilled to semi-skilled and from semi-skilled to highly skilled, merely because a workman had completed regular continuous service of a certain number of years. It was further held that requirement of trade test, wherever prescribed, for promotion from one category to another has to be adhered to. It was also directed that all workers deputed to perform the duty of Enquiry Clerks and having qualification of matriculation have to be given higher scales. The learned counsel, relying on this award, contended that when applicants have been functioning as Enquiry Clerks/Enquiry Attendants for a number of years, it has to be inferred that the work and job of Enquiry Clerk/Enquiry Attendant exists; performance of applicants on the post of Enquiry Clerk/ Enquiry Attendant has been satisfactory; the job of Enquiry Clerk/Enquiry Attendant being semi-skilled, applicants cannot be downgraded to the unskilled category of Beldars, and as such, should be regularised on the post of Enquiry Clerks/Enquiry Attendants. Learned counsel referred to CPWD Manual Volume-III (Work Charged Establishment) 1972 edition, in which ten posts of Enquiry Clerks/Telephone Clerks are stated to have been created during 1965 and 1966 and transferred to regular establishment.

4. The learned counsel of respondents rebutted the arguments advanced by the learned counsel of applicants.

4

He stated that neither a post of Enquiry Clerk/Enquiry Attendant exists in the CPWD nor do any rules relating to such posts have been notified. Thus, when applicants have never been appointed as Enquiry Clerks/Enquiry Attendants, the question of their regularisation on such posts or reversion therefrom would not arise. He stated that better qualified persons than these applicants are available among the Beldars and those who have been declared surplus. When such persons have not been appointed as Enquiry Clerks/Enquiry Attendants, applicants cannot be considered for absorption against non existing posts of Enquiry Clerks/Enquiry Attendants. The learned counsel further stated that the terms of arbitration award never related to creation of posts of Enquiry Clerks/Enquiry Attendants and regularisation on such posts was never an issue under consideration in the arbitration. The learned counsel stated that arbitration award dated 31.1.1988 as modified by the Delhi High Court related to merger of various categories of posts, upgradation of workmen from one category to another, like from unskilled to semi-skilled and from semi-skilled to highly skilled by holding a trade test, and also to pay workers in the scales related to the re-classified categories of jobs; it did not relate to regularisation of such workmen on non-existing posts of Enquiry Clerks.

5. The learned counsel of respondents next stated that respondents have been loosely referring to the work being done by applicants regarding noting down complaints etc. as Enquiry Clerks, otherwise no such post has been in existence. In this view of the matter, applicants

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cannot claim regularisation of their services on a non-existing post nor can they have any objection to their deployment on their basic post of Beldars. The learned counsel stated that applicants have always been paid pay and allowances as Beldars. The learned counsel referred to Appendix-I (paragraph 1.02) of CPWD Manual Volume-III (Work Charged Establishment) 1984 edition, where a table showing the approved categories in the work charged establishment of CPWD, their scales of pay, nature of skill and the wing of the CPWD in which they are employed are stated. Whereas the category of Beldar (skilled) is mentioned at sl. no.5 in the table, the category of Enquiry Clerk/Enquiry Attendant is not included at all.

6. Order dated 20.9.2002 in OA No.55/2002 (Jai Prakash & Ors. v Director General of Works, CPWD) has been brought to our notice in which similar facts and identical issues had been adjudicated upon. Applicants therein were also Beldars who had sought regularisation of their services as Enquiry Clerks in pursuance of O.M. dated 4.7.1988 as also the arbitration award dated 31.1.1988 read with the related orders of Delhi High Court referred to above. In that case the Tribunal had considered the import of the arbitration award and circular dated 4.7.1988 along with the following orders/circulars :

- (1) circular dated 9.9.1999 whereby work charged Beldars 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;

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- (2) subsequent circular dated 16.12.1999 rendering certain clarifications relating to implementation of the award;
- (3) judgment of this Tribunal dated 5.5.1993 in OA No.712/1991 (**Ram Nath Singh v Union of India**) read with the order of Supreme Court dated 29.7.1994 whereby SLP against the aforesaid order of the Tribunal was dismissed;
- (4) orders rendered by this Tribunal in OA No.431/1996 (**M.Chandrasekharan & Anr. v CPWD**); and
- (5) OA No.917/1999 with OA No.24/1999 (**Harish Chander Kala v CPWD**) and OA No.1883/1997 (**Dharma Vir v CPWD**) decided respectively on 1.3.2000, 30.10.2000 and 11.12.2000.

Arguments raised in the present matter were also considered by the co-ordinate Bench in the case of **Jai Prakash** (supra). It was held that the applicants therein had continued to work essentially as Beldars and cannot claim the benefit of regularisation as Enquiry Clerks by relying on the circular dated 4.7.1988 or otherwise. The following observations/directions were made :

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

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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.

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 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

16

- 9 -


created. They shall be given, as already provided, the benefit of age relaxation only at the relevant time.

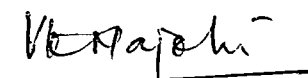
21. In the light of the foregoing the reliefs prayed for are not granted and the OA is disposed of in the aforestated terms. No costs.

22. Interim order passed on 8.1.2002 stands vacated."

7. The aforestated observations and directions in the case of **Jai Prakash** (supra) are squarely applicable to the facts of the present case as well. Furthermore, Appendix-I (paragraph 1.02) of CPWD Manual (Work Charged Establishment) 1984 edition does not include the category of Enquiry Clerk/Enquiry Attendant as an approved category in the work charged establishment of CPWD. Obviously, the post on which applicants have sought regularisation does not exist. The OA is disposed of in the same terms as stated in **Jai-Prakash** (supra).

8. Interim orders passed on 15.1.2002 are vacated.


(Kuldip Singh)
Member (J)


(V. K. Majotra)
Member (A)

/as/