

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 2019/2002  
MA NO. 1649/2002  
MA NO. 2723/2002

This the 16th day of December, 2002

~~

HON'BLE SH. SHANKER RAJU, MEMBER (J)

1. Sukhdeen Verma  
S/o Lakshmi Ram  
R/o Vill. & P.O. Alawalpur,  
Tehsil Palwal, Haryana.
2. Makan Lal  
S/o Laxman,  
R/o T.Camp C/21, Kicharipur,  
New Delhi.

(By Advocate: Sh. G.S.Chaturvedi)

Versus

1. Secretary,  
Department of Culture  
Ministry of Human Resources & Development,  
Shastri Bhawan,  
New Delhi.
2. Director-General Incharge,  
Archaeological Survey of India  
Janpath, New Delhi.
3. Superintendent ASI, Delhi Circle,  
Safdarjung Tomb, New Delhi.

(By Advocate: Sh. R.P.Aggarwal)

O R D E R (ORAL)

Applicants through this OA seek reinstatement in service with accord of temporary status and also direction for creation of Group "C" post and payment of arrears and service entitlements on account of having their permanent status as Group "C" employees.

2. Briefly stated, applicants who have been working with the respondents since 1984 as skilled Mason, their request for regularisation was not paid any heed to as such OA-1290/89 was filed, which was disposed of on 5.2.93 with the directions that the respondents shall consider creation of requisite number of posts in which the applicants should be regularised

as per rules. CP-117/97 was disposed of on 7.10.94 reiterating the earlier directions and further directing the respondents to constitute a committee to examine requirement of workers and creation of regular jobs.

3. Accordingly, the committee was formed which recommended 6 posts of Masons but by an order dated 13.12.97 Govt. of India, Archaeological Survey of India accepted the recommendation to the extent of creation of 2 posts of Mason.

4. Applicants filed OA-513/99 which, by an order dated 31.7.2000, was disposed of with the directions to the respondents to consider the claim of the applicant for regularisation of posts of Mason in accordance with law and further to go into the issue of creation of further number of posts in Group 'C' by an order dated 31.8.2001 in CP-129/2001. The CP was dropped and further another CP-689/2001 was disposed of on 22.2.2002 giving liberty to the applicant to pursue the remedy in accordance with law. Counsel of the applicant Sh. Chaturvedi contends that DOPT Scheme of 1993 does not preclude the respondents from regularising the services of the applicant in Group 'C' having rendered more than 15 years of service. It is further stated that the respondents in compliance, have regularised their juniors who are admittedly below them in the seniority list and that despite recommendation of 6 posts, the respondents have created only 2 posts which is also wilful disobedience of the orders of the court passed earlier.

5. On the other hand respondents' counsel Sh. Aggarwal strongly rebutted the contentions and stated that it is the prerogative of the Government to consider the recommendations and accordingly keeping in view the work and other

circumstances for Mason 2 posts have been created. One post of Mason was also made available. A selection was held for 3 posts of Mason and interview was held on 21.5.2001 but only Kishan Pal attended the interview. In order to provide another opportunity interviews were held on 28.5.2001. Out of 10 applicants which included the applicants, 3 persons were selected and on approval by the competent authority, one Kishan Pal and Ram Jad have been appointed on regular basis whereas the case of third selected candidate, Sardar Singh has been referred to the DOPT for their opinion in the matter, as he was not found eligible in terms of the rules.

6. By referring to the decision of this court in OA-2018/2002, it is contended that the legality of the selection held by the respondents has been upheld in OA-2018/2002 in Sardar Singh and another vs. Union of India and one post of Mason for Sh. Sardar Singh has been left vacant as the issue of relaxation of age is pending with DOPT. Counsel for respondents further states that the DOPT Scheme of 1993 would not apply to the Masons in Group "C" and the selection process has been held and the appointment has not been made in the order of seniority. Lastly, it is contended that having participated in the selection, it is not open for the applicants to challenge the process without any material of malafides or violation of any procedural rules.

7. I have carefully considered the rival contentions of the parties and peruse the material on record.

8. In so far as creation of posts is concerned, the directions have been issued to go into prospects of creation of posts to regularise the applicants through a committee against which the CP has been dismissed, the respondents

acting upon the recommendation created two posts of Mason. Applicants who have not earlier participated in the selection process, i.e., interview, have been accorded another opportunity on 28.5.2001 as they have failed to make the grade, the other 3 selected have been appointed. There is no material to establish that the process has been vitiated by malafides or violation of any rules. Applicants have been given a reasonable opportunity to be regularised but having failed to obtain the requisite merit the respondents have selected and appointed two others which to my considered view on the basis of record is not on the basis of seniority.

9. In so far as the application of Scheme of DOPT dated 10.9.93 is concerned, the same applies to a casual worker seeking regularisation to Group "D" and would not apply in case of regularisation of Group "C" employees to whom a separate process is laid down and undertaken by the respondents through their selection/interview held on 28.5.2001. However, keeping in view the fact that the applicants are continuing since 1984, respondents shall consider their cases in accordance with rules on if the posts are available. They should also continue the applicants in the event <sup>u</sup> the work is available, i.e. the work of Mason, being performed by the applicants.

10. With these observations, the claim of the applicants is found bereft of merit and accordingly, OA is dismissed. No costs.

S. Raju

( SHANKER RAJU )  
Member (J)

"sd"