



CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

No. O.A. 350/01292/2016

Reserved on : 28.1.2020

Date of order: 07.02.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Kuntal Konar,  
Son of Santi Nath Konar,  
Aged about 45 years,  
By faith - Hindu,  
By occupation - unemployed,  
Residing at Village - Ratanpur,  
P.O. & P.S. - Singur,  
District : Hooghly, Pin - 712 409.

..... Applicant.

Versus

1. Union of India,  
Service through the Secretary,  
Ministry of Law and Justice,  
Government of India,  
Shastri Bhawan,  
New Delhi - 110 001.
2. The Law Secretary,  
Ministry of Law and Justice,  
Department of Legal Affairs,  
Government of India,  
Shastri Bhawan,  
New Delhi - 110 001.
3. The Section Officer,  
Department of Legal Affairs,  
Government of India,  
Shastri Bhawan,  
New Delhi - 110 001.

..... Respondents.

For the Applicants : In person

For the Respondents : Mr. B.B. Chatterjee, Counsel



**ORDER**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

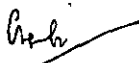
- a) An order be passed declaring the impugned order dated 15.2.2016 as null and void.
- b) An order be passed directing the Respondent Authorities to regularise the job of the Applicant for the post of Night Watchman in terms of the notification dated 28.6.2013.
- c) An order be passed directing the Respondent Authorities to regularise the Applicant's appointment for the post of Night Watchman from 28.6.2013 and issue appointment letter in favour of the Applicant.
- d) An order be passed to regularise the Applicant's service forthwith.
- e) An order be issued in favour of the Applicant as a permanent staff in the abovementioned post from the date of joining his service.
- f) Such further and/or other order or orders as may be deemed fit and proper.

2. Heard rival contentions of the applicant in person as well as Ld. Counsel for the respondents. Examined pleadings, documents on record.

Further documents were furnished by the respondent authorities in response to directions of this Tribunal and the applicant was given an opportunity to inspect the same during course of hearing.

3. The matter, in brief, is that the applicant had been appointed on 2.12.1994 in the post of a Night Watchman on a daily rated basis. That, on 28.6.2013, a notification was issued (Annexure A-2 to the O.A.) whereby the sanctioned post of Night Watchman was notified and the applicant thereafter made a series of representations to the respondent authorities requesting the respondent authorities to regularize him against such sanctioned post.

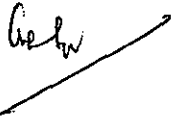
Being aggrieved with the lack of any favourable response to his representations, the applicant approached this Tribunal in first stage litigation in O.A. No. 1113 of 2015 which was disposed of on 8.12.2015





by directing the respondent authorities to issue a detailed speaking order after hearing the applicant in person. The Tribunal did not enter into the merits of the matter. The respondents, thereafter, issued a speaking order rejecting his claim, and, being, aggrieved with such rejection, the applicant represented further to the respondent authorities. Not finding succor therefrom, the applicant has approached the Tribunal in second stage litigation, praying for the abovenoted relief. .

4. As the applicant has challenged the speaking order, we would proceed to examine the same in detail. The speaking order dated 15.2.2016 (Annexure A-6 to the O.A.) as well as (R-3 to the reply) is reproduced as below:-







Annexure-3 (col)

संख्या/No. I-13015(1)/2015-Adm.(Kol) / 5980/5981

भारत सरकार/Government of India

विधि एवं न्याय मंत्रालय/Ministry of Law & Justice

विधि कार्य विभाग/Department of Legal Affairs

शाखा सचिवालय/Branch Secretariat

2<sup>nd</sup> & 3<sup>rd</sup> floor, Middle Building  
11, Strand Road, Kolkata - 700001  
Tel: 033 2248 9625

Dt: 15-2-2016

NOTE

Sub: OA No. 350/1113 of 2015 – filed by Shri Kuntal Konar Vs. UOI & Ors. in Central Administrative Tribunal, Kolkata Bench, Kolkata.

In compliance of Order dt: 08-12-2015 in the matter of OA No. 350/1113 of 2015 delivered by the Hon'ble CAT, Calcutta Bench, Kolkata, whereas a personal hearing given to Shri Kuntal Konar on 22-1-2016 at 11-00 am before the Section Officer who is duly authorized by other respondents to hear him on behalf of other respondents. Shri Kuntal Konar duly attended the said personal hearing on 22-1-2016 at 11-00 am. In compliance of the Order passed by the Hon'ble CAT, Calcutta Bench dated 08.12.2015 in O.A. No. 350/1113 of 2015 as directed to the Respondent Authority concerned to give personal hearing to the Applicant, pass a detailed speaking order and communicate the same within a period of two months from the date of receipt of a copy of the Order. In compliance to the Order of the Hon'ble CAT, the Respondent Nos. 1 and 2 authorise the Respondent No.3 to give a personal hearing to the Applicant, to pass a detailed speaking order and communicate the same within a period of two months. Accordingly, the letter has been issued to the Applicant to appear in person for personal hearing on 22.01.2016 at 11-00 a.m. In compliance to the letter, the Applicant appeared before Respondent No.3 and personal hearing was made. In his personal hearing, he has submitted the same grievance what was in his representation dated 17.09.2013 before Law Secretary.

2. The OA was filed seeking the following reliefs:-

(a) To direct the concerned respondents to immediately absorb the applicant as on regular basis under the Branch Secretariat, Department of legal Affairs, Kolkata wherein he had worked for more than 18 years, for which he is legally entitled to;

(b) To direct the concerned respondents to transmit and authenticate and produce all the records in connection with the aforesaid matter before this Hon'ble Tribunal so that conscionable justice may be done to the applicant upon hearing the parties;

(c) To direct the respondents concerned to allow the applicant to resume his duties in the Group D post, wherein he had been working for last 18 years, under the Respondent No. 3 herein, till disposal of the instant application;

(e) And to pass such other or further order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper.

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3. Whereas in his representation dt: 17-09-2013 to the Law Secretary, Shri Kuntal Konar has claimed that he was appointed in the Br. Sectt., Kolkata on daily wage basis w. e. f. 01-12-1994. Whereas as per record, Shri Kuntal Konar was engaged on daily wage basis for a brief and intermittent period during December, 1994, April 1995, July 1995, November 1995 & April 1996. After the above said period he was again called back after 15 (fifteen) years to perform some work of intermittent nature during February 2011. As such the relief sought for in the OA that he had worked for more than 18 years, is not factually correct as per Official record. Accordingly no question of resumption of duties did arise. Whereas the claim that Shri Kuntal Konar has been working under the Respondent Department ever since 1994 till 2013 is not also factually correct as per Official record. After personal hearing and after going through the Representation dated 17.09.2013 and on perusal of the official record, it was found that he has never been appointed in the Branch Secretariat, Kolkata on the request of his father on 01.12.1994. He has been engaged on daily wage basis to meet the need of the situation from 01.12.1994 to 01.01.1995 i.e. for 32 days, from 12.04.1995 to 23.05.1995 (42 days), from 07.07.1995 to 23.07.1995 (17 days), 11.11.1995 to 13.12.1995 (33 days) and 04.04.1996 to 12.05.1996 (39 days). So, his service as Daily Wager has been utilized for the above said periods and he has never been employed for 206 days continuously. After a gap of 15 years to meet the need of the situation and to meet the exigency of work he was further engaged as daily wager in February, 2011 (9 days), Mar. '11 (23 days), Jan. '12 (5 days), Feb. '12 (20 days), Mar. '12 (21 days), April '12 (19 days), May '12 (23 days), June '12 (21 days), July '12 (22 days), August '12 (21 days), Sept. '12 (20 days), Oct. '12 (20 days), Nov. '12 (12 days), Jan. '13 (20 days), Feb. '13 (20 days), Mar. '13 (16 days), April '13 (22 days), May '13 (23 days), June '13 (20 days), July '13 (23 days), August '13 (20 days), Sept. '13 (21 days), Oct. '13 (19 days), Nov. '13 (01 day), Dec. '13 (21 days), Feb. '14 (10 days).

4. Whereas in a similar representation to the Law Secretary dt: 02-12-2013 Shri Konar has prayed for his appointment citing the same reason as at para 3 above. And whereas in his representation dt: 22-04-2015 to the Law Secretary he prayed for his absorption in the O/o the Min. of Law & Justice citing his family problems. Whereas Shri Konar had never been engaged through employment exchange in a regular manner.

5. Whereas as per rule, 'those appointed through Employment Exchange and possessing minimum 2 years continuous service as casual labour in the office / establishment are eligible for appointment to regular post without further reference to Employment Exchange. Considering this, it is wrong to say that the Applicant has been serving the same and continuing to till date. It is not within knowledge that who were the daily wagers posted at Mumbai and Chennai permanently absorbed in different Branch Secretariats of Ministry of Law & Justice. Since neither he was or is in service, his resumption of duty in Group-D post cannot be allowed. For appointment in Group-D post, certain Rules are there which require to be fulfilled as and when the post will remain vacant. The Applicant does not possess the minimum experience for the appointment to a regular post.

6. Keeping in view of above, Shri Kuntal Konar is not eligible as-per rule for appointment on regular basis in the Min. of Law, Branch Sectt., Kolkata.

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7. Considering all these, the Application/Representation dated 17.09.2013 for appointment on regular basis is not acceptable, since the Rule does not permit for regularization of a person without due process of law.

  
(Panchadip Chaudhuri)  
Section Officer

To  
Shri Kuntal Konar  
S/o Shri Santi Nath Konar  
Vill: Ratanpore  
P.O. & P.S. : Singur  
Dist: Hooghly - 712 409

Copy forwarded information to:-

1. Shri K. Ginkhan Thang  
Deputy Secretary to the Govt. of India  
Ministry of Law & Justice  
Department of Legal Affairs  
Shastri Bhawan  
New Delhi - 110001.
2. Shri J. P. Dubey  
Asstt. Legal Adviser  
Min. of Law & Justice  
Br. Sectt., Kolkata

  
(Section Officer)

R-3  
ALL INFORMATION IS SUBJECT TO  
SEC. 80(1), AND IS CLASSIFIED  
AS SECRET  
BCh

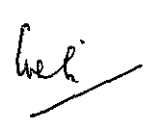
O/C

Email ID: - bskol3@bsnl.in



The following is inferred from the speaking order:-

- (i) As per record, the applicant was engaged intermittently on Daily Wage Basis during the months of December, 1994, April, 95, July, 95, November, 95 and April, 96. Fifteen years later, he was again recalled to perform some work of intermittent nature during February, 2011.



- (ii) As the applicant was recalled to perform some intermittent functions in the office of the respondent authorities after a gap of 15 years, the fact that he had worked for more than 18 years or that he resumed his duties in 2011, is denied by factual records.
- (iii) That, the applicant had not worked continuously from 1994 till 2013.
- (iv) Although his father, who was a Court clerk, had prayed for appointment of his son as a Night Watchman in the year 1997, he was only appointed on Daily Wage basis for the following period:-

<b>Period/Year</b>	<b>No of days worked with breaks</b>
<b>1994</b>	
1.12.1994-1.1.1995	32
<b>Total no. of days worked in 1994</b>	<b>32</b>
<b>1995</b>	
12.4.1995 – 23.5.1995	42
7.7.1995 – 23.7.1995	17
11.11.1995 – 13.12.1995	33
<b>Total no. of days worked in 1995</b>	<b>92</b>
<b>1996</b>	
4.4.1996 – 12.5.1996	39
<b>Total no. of days worked in 1996</b>	<b>39</b>

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<b>2011</b>	
February, 11	9
March, 11	23
<b>Total no. of days worked in 2011</b>	<b>32</b>
<b>2012</b>	
24.1.2012 - 31.1.2012	5
1.2.2012 - 29.12.2012	20
1.3.2012 - 14.3.2012	9
2.4.2012 - 30.4.2012	19
1.5.2012 - 31.5.2012	23
1.6.2012 - 29.6.2012	21
2.7.2012 - 31.7.2012	22
1.8.2012 - 31.8.2012	21
3.9.2012 - 28.9.2012	20
1.10.2012 - 31.10.2012	20
1.11.2012 - 30.11.2012	12
December, 12	Nil
<b>Total no. of days worked in 2012</b>	<b>192</b>
<b>2013</b>	
3.1.2013 - 31.1.2013	20
1.2.2013-28.2.2013	20
1.3.2013 - 21.3.2013	16
1.4.2013 - 30.4.2013	22
1.5.2013 - 31.5.2013	23
3.6.2013 - 28.6.2013	20
1.7.2013 - 31.7.2013	23
1.8.2013 - 30.8.2013	20



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2.9.2013 – 30.9.2013	21
1.10.2013 – 31.10.2013	19
1.11.2013	1
-	-
<b>Total no. of days worked in 2013</b>	<b>205</b>
1.1.2014 – 31.1.2014	21
<b>Total no. of days worked in 2014</b>	<b>21</b>

Consequently, the applicant has never been employed **continuously** for 206 days despite his claim to such effect.

(v) As per rule, those appointed through Employment Exchange and those who possess a minimum of two years' regular service as Casual Labour are liable to appointment to regular posts without further reference to Employment Exchange. The applicant fulfilled none of these conditions and being bereft of minimum experience, his prayer for regularization was rejected.

5. The applicant, in his rejoinder, would refute the claim of the respondent authorities by stating that he was engaged as Night Watchman in 1994 after an interview and, that, he worked continuously upto 5.6.1997 i.e. for a period of 430 days but there was no attendance registrar in which he had recorded his attendance. Further, that he had worked continuously for 204 days in 2012 and for 226 days in 2013 respectively.

The applicant was permitted to inspect records furnished by the respondents so as to ascertain and collect records which would support his claim.

As directed, the respondents would also produce the daily wage bills for the period mentioned in para 6.5 of their reply, namely, that the applicant had never been employed continuously for 206 days. The said

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documents reveal that the applicant had drawn his daily wages per month (for specified number of days), as under:-

- (i) Rs. 1085/- in January, 2012 for 5 days.
- (ii) Rs. 4340/ in February, 2012 for 20 days.
- (iii) Rs. 1953/- in March, 2012 for 9 days.
- (iv) Rs. 4123/- in April, 2012 for 19 days.
- (v) Rs. 4991/- in May, 2012 for 23 days.
- (vi) Rs. 4557/- in June, 2012 for 21 days.
- (vii) Rs. 4774/- in July, 2012 for 22 days.
- (viii) Rs. 4557/- in August, 2012 for 21 days.
- (ix) Rs. 4340/- in September, 2012 for 20 days.
- (x) Rs. 4340/- in October, 2012 for 20 days.
- (xi) Rs. 2604/- in November, 2012 for 12 days.

From December, 2012 onwards, the applicant has not been engaged further on Daily Wage basis as his name does not find mention in the wages bill prepared for payment to daily wagers.

The applicant has not disputed the amount of daily wages received and also the number of days worked as per report furnished by the respondents. He was, however, given an opportunity to inspect such documents and furnish such copies as he would have chosen to advance in his support.

6. The ratio in **Secretary, State Of Karnataka & ors. vs. Umadevi & Others 2006 (4) SCC 1** has been applied to the following situation viz.:

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- (i) where appointments were made in the teeth of a policy decision that there should not be any further recruitment in the marketing department of a public sector company;
- (ii) where the appointments were made on temporary basis for transitory work,
- (iii) on work charged basis;
- (iv) where ample materials existed showing that the temporary or contingent employees were doing the work of permanent nature and were required to do work which were used to be done by skilled employees where at the relevant point of time statutory rules provided for selection through Public Service Commission which was not done;
- (v) where a direction was given by the High Court that part time tube well operators are to be treated as permanent employees;
- (vi) where a circular had been issued containing guidelines to engage the existing contractual labour, such as piecemeal rated labour against sanctioned vacancies as that would violate Art. 16;
- (vii) where regularization was sought to be made on the basis of a policy decision contained in a circular letter and even if it was one adopted in terms of Art. 162 of the Constitution emphasizing primacy of statutory rules and rules under Art. 309;
- (viii) where an industrial dispute was raised by a temporary employee of an university claiming regularization on the basis of working continuously over 14 years.

Prior to **Uma Devi (supra)** if the adhoc/casual/temporary appointments were made against sanctioned posts and the policy of adhocism is followed for a long period without filling up the posts on regular basis, the court was allowed to interfere.

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In ***State of Haryana v. Piara Singh, (1992)4 SCC 118*** the dicta of the Hon'ble Apex Court was that if an adhoc or temporary employee is continuing for a fairly long spell, the authority must consider his case for regularization, provided he is eligible and qualified in accordance with law.

If the initial entry, however, is unauthorized, and, is not against any sanctioned vacancy, question of regularizing the incumbents on such a non-existent vacancy will never survive for consideration. In this case, the applicant was admittedly not appointed through the Employment Exchange or as per recruitment rules. His initial intermittent engagements started during 1994-1995 but the sanctioned post of the Night Guard was only declared in 2013.

Accordingly, his claim that he had been appointed against a sanctioned post is not established. The applicant, having worked in intermittent spells, and, having resumed his work with the respondent authorities, after a long spell of 15 years, could not establish his claim that he worked continuously from 1994 to 2013. The applicant has not been able to dispute the records furnished by the respondent authorities to establish that the number of days that he claimed to have worked with the respondent authorities are either continuous or equivalent to the requisite period. Hence, we do not consider the applicant's claim as substantiated either by facts or in law.

Accordingly, the claim fails.

Given the applicant's past services, the respondent authorities, however, may continue to engage the applicant on daily wage basis, as per actual requirement until the post is filled up on a regular basis. The order shall, however, not preclude the authorities to outsource the hiring process to an agency as per provisions of General Financial Rules with

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liberty to the applicant to register himself with such agency, if so required.

6. With these directions, the O.A. is disposed of. No costs.

*(Dr. Nandita Chatterjee)*  
*Administrative Member*

*(Bidisha Banerjee)*  
*Judicial Member*

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