

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1426/2001 with
OA No.3095/2001

New Delhi this the 10th day of July, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

(15)

OA No.1426/2001

1. All India CPWD (MRM) Karamchari Sangathan (Regd), through its President, Shri Satish Kumar, 34-D, DIZ Area, Sector 4, Raja Bazar, New Delhi-110001.
2. Guru Dev Sharma,
S/o late Ram Chand Sharma
3. Ram Kumar Sharma
S/o Prabhu Dayal Sharma
4. Kunwar Singh Rawat,
S/o Ram Singh Rawat
5. Basant Lal Gupta,
S/o late Itwari Lal Gupta
6. Ajab Singh
S/o late Ishwari
7. Yashpal Singh,
S/o late Sarup Singh
8. Prem Kumar,
S/o Sarup Singh
9. Hajari Lal,
S/o Nainsukh Sharma
10. Kailash Nath Ram
S/o Jagdish Ram
11. Mahabir Singh Rawat,
S/o Daulat Singh Rawat
12. Suresh Chand,
S/o Dayaram Yadav
13. Rajbir Singh
S/o Mukhtiyar Singh
14. Babu Ram,
S/o Gaindaram
15. Dan Singh,
S/o Gopal Singh
16. Shrikant
S/o Krishan Sharma
17. Mool Chand Sharma
S/o Murari Lal

(16)

18. Sunil Kumar,
S/o Prakash Chand
19. Maheshwar Singh,
S/o Bhagwan Singh
20. Rambabu,
S/o Shri Kanchhid Sharma
21. Janki Prasad, - Respondents
S/o Pareswar Prasad

(Applicants Nos. 2 to 21 are C/o
All India CPWD (MRM) Karamchari Sangathan
(Regd), office at 34-D, DIZ Area,
Sector 4, Raja Bazar, New Delhi-110001.

(By Advocate Shri Naresh Kaushik with Miss Shilpa Chauhan)

-Versus-

1. The Director General of Works,
CPWD, Nirman Bhawan,
New Delhi.
2. Deputy Secretary,
Govt. of India, —
CPWD, Nirman Bhawan,
New Delhi.
3. The Executive Engineer,
'H' Division, CPWD,
Mahadev Road,
New Delhi.
4. The Executive Engineer,
Unfiltered Water Supply Division,
CPWD, Mahadev Road,
New Delhi.
5. The Executive Engineer,
"L" Division, CPWD,
Barakhamba Road,
New Delhi. - Respondents

(By Advocate Shri A.K. Bhardwaj)

OA No. 3025/2001

Shri Ranvir Singh,
S/o Shri Yad Ram,
Enquiry Clerk, C.P.W.D. (Civil),
Seva Kendra, Aram Bagh,
New Delhi.

-Applicant

(By Advocate -None)

-Versus-

1. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi.



2. Deputy Secretary to the
Govt. of India,
Ministry of Urban Affairs,
Nirman Bhawan,
New Delhi.

3. Executive Engineer (Civil),
Ram Manohar Lohia Hospital Division,
Central Public Works Department,
New Delhi.

-Respondents

(By Advocate - None)

O R D E R

By Mr. Shanker Raju, Member (J):

As the issues raised in these OAs involve common question of facts and law, they are disposed of by this common order.

2. Applicants have impugned the validity of the orders dated 13.7.2000, 11.10.2000 and 11.5.2001, issued by the respondents, whereby the benefits which had already accrued in their favour have been sought to be withdrawn. They have sought quashing of these orders with all consequential benefits.

3. By an order dated 31.5.2001 by way of an interim order respondents have been restrained from physically reverting the applicants from the posts of Enquiry Clerk to the posts of Beldar.

4. On certain demands of Central Public Works Department (CPWD) employees the matter was referred for arbitration and consequently an award was passed on 31.1.98, wherein it has been held that muster roll employees like Beldars etc. are deployed to do the job of Enquiry Clerk and such of the

workmen are paid wages as admissible to either unskilled/semi skilled category, though they are entitled to the payment of wages in the skilled category.

5. Aforesaid award was challenged before the High Court of Delhi in CWP No.2792/88 by an order dated 25.9.98 decision of the Arbitrator was confirmed by the High Court with modification by holding that "all the workers deputed to perform the duty of Enquiry Clerk and having qualification of matriculation are to be given higher scales." SLP preferred against the decision of the High Court was dismissed.

6. The award was implemented by the CPWD by an order dated 9.9.1999, fixing the pay of the applicants.

7. On 16.12.99 a notification was issued in respect of Beldar/Enquiry Clerk stipulating that the benefit of the award is required to be passed on to the work charged Beldars performing the duty of Enquiry Clerks if they are matriculate.

8. On 13.7.2000, respondents through their circular directed the officers not to assign the job of higher category to Beldars of Enquiry Clerks.

9. Applicants apprehending their reversion sought recourse to the present OA.

10. Shri Naresh Kaushik, learned counsel appearing for the applicants contended that the Manual of CPWD mentions about the Beldars and the Enquiry Clerks are not appointed

directly. From 1992 onwards Beldars manned the posts of Enquiry Clerks but have not been paid correspondingly, which led to the arbitration proceedings. The reference to the arbitration was payment to the Beldars for the work done as Enquiry Clerks on rationalisation and classification of the posts of Enquiry Clerk. This led to reduction in rank of the applicants and as they have demanded their arrears the aforesaid decision not to assign the work of Enquiry Clerks of Beldars has been taken by the respondents arbitrarily. According to him the proposed action of the respondents is in contravention of Articles 14, 16 and 311 (2) of the Constitution of India. Once the modified award is confirmed by the Apex Court the same attains finality. The impugned orders seek to take away the benefits which had accrued under the decision of the court is perverse, illegal and unconstitutional.

11. It is stated that the applicants have a vested right under the judgement of the Court which has attained finality. The impugned circulars taking away those rights are illegal.

12. Shri Kaushik further stated that the impugned orders are arbitrary, as no reasons have been assigned whatsoever for withdrawal of the benefits of the right vested in the applicants. No opportunity, before reversion, has been accorded.

13. Learned counsel placed reliance on a decision of the coordinate Bench in OA-712/91 - Sh. Ram Nath Singh v. Union of India decided on 5.5.93 as well as in OA-2355/88 - Subhash Chand Sharma v. Union of India & Ors. decided on

30.05.91, wherein directions have been issued to re-examine the case of the applicants therein, who being Beldars have worked for a number of years as Enquiry Clerks. The aforesaid decisions have been upheld by the Apex Court in SLP on 5.5.94. It is in this backdrop stated that the applicants are to be continued as Enquiry Clerks and to be further considered for regularisation and also entitled for being accorded the pay and allowances attached to the posts of Enquiry Clerk.

14. It is stated that from the CPWD Manual Vol. III work charged establishment post of Enquiry Clerk is one of the posts and categories transferred to regular establishment. According to the learned counsel as per the award respondents have to grant Beldars who were performing the duties of Enquiry Clerks higher pay scale.

15. Shri Kaushik further stated that the as per the orders passed by the High Court not only the arrears were to be paid but the Beldars who were performing the duties of Enquiry Clerks and were matriculate were to be given higher pay scale. It is further demonstrated through number of documents that the post of Enquiry Clerk still exists. It is in this backdrop stated that the post of Enquiry Clerk does not exist how the work of Enquiry Clerk is continued to be taken under one nomenclature or other. In so far as the decision of a coordinate Bench in OA No.917/99 with OA-24/99 in Harish Chander Kala decided on 30.10.2000 it is contended that the same has not taken into consideration the OM of 1998 which stipulates regularisation after two years officiation and is also per incuriam of the Apex Court's decision on the subject.

(21)

16. By further referring to the minutes of the 50th meeting of the Central Advisory Contract Labour Board Held on 22.11.2001 it is contended that in its recommendation it has been proposed to abolish contract labour, which clearly proves the existence of Enquiry Clerk on regular basis and the post of Enquiry Clerk in the establishment of the CPWD.

17. Shri Kaushik contended that OA-2237/2000 filed before this court was disposed of on 9.10.2001, rejecting the OA. On approaching the High Court by an order dated 20.12.2001 liberty was granted to the petitioners to re-agitate the matter taking, inter alia, the plea of circular dated 4.7.88, which stipulates regularisation of muster roll casual labour who had worked for 240 days in two consecutive years.

18. Learned counsel Shri A.K. Bhardwaj, appearing for the respondents denied the contentions of the applicants and stated that there is no policy or scheme of the Government to regularise the Beldars or any other work charged Group 'D' employees as Enquiry Clerk. It is further stated that as there exists no post of Enquiry Clerk where the post of LDC is to be filled up as per the recruitment rules through Staff Selection Commission, though some work charged staff, including Beldars volunteered to perform the duty of Enquiry Clerk on short term measure to avoid physical labour would not bestow on them a right to claim regularisation against a non-existing post. Regularisation cannot be done de hors the recruitment rules. By placing reliance on a decision of the coordinate Bench in - Harish Chander Kala (supra) as well as OA-1883/97 - Dharamvir v.

(22)

CPWD it is contended that the similar controversy was raised and rejected on the ground that regularisation cannot be done de hors the rules. However, the claim for payment of salary in the pay scale of the Enquiry Clerk was ordered to be paid to them.

19. Shri Bhardwaj further stated that no where in the arbitration award directions have been issued to regularise the applicants in the posts of Enquiry Clerk or there was any direction for creation of posts which is the prerogative of the Government. It is also stated that the High Court directed payment of salary and allowances to the work charged employees performing the higher duties. As a result, in compliance the applicants have already been granted their dues and salary.

20. As the subordinate officers continued to assign job of higher category to work charged employees which was against the policy decision of the Government, competent authority advised them not to resort to such an engagement in future.

21. During the course of the arguments to our pointed query as to existence of post of Enquiry Clerk in the CPWD Sh. A.K. Bhardwaj produced before us the recruitment rules showing the departmental cadre and pay scale and from the perusal of the same we find that there is not cadre/post of Enquiry Clerk as per CPWD Manual Vol. I, a copy of which is taken on record. It is contended that as there is no policy of the Government to regularise the work charged Group 'D' employees against Group 'C' posts, which are to be filled up in accordance with the recruitment rules and as there exists no post of Enquiry Clerk

applicants are not entitled for regularisation. Even as per the award no regularisation has been ordered. As a policy decision if the applicants have to be discontinued there will be no illegality in the action of the respondents.

22. We have carefully considered the rival contentions of the parties and perused the material on record. We are not impressed by the arguments of the learned counsel for the applicants^h as to the directions of the High Court in modified award as to creation of the posts of Enquiry Clerk and regularisation of the applicants' services as Enquiry Clerks. Our view is fortified by the decision of the High Court dated 20.12.2001 in CWP 6552/01, wherein it has been categorically observed has been made as to regularisation of the petitioners therein as Enquiry Clerks. The resort of the applicants to the letters of the respondents showing existence of Enquiry Clerk post as well as the minutes of the meeting of Central Advisory Contract Labour Board are of no avail to the applicants as from the perusal of the recruitment rules and the departmental cadre we do not find any post of Enquiry Clerk in the CPWD Manual Vol.I. Moreover the dispute was referred for arbitration for payment of pay and allowances to work charged Beldars who have been performing the duties of Enquiry Clerk. In this backdrop the arbitration award recommended payment of pay and allowances to the workmen and consequently by their own decision the respondents have allowed re-categorisation of matriculates from unskilled to semi skilled and allowed them pay scale. The modified award also reiterated the same and has accorded the Beldars pay and allowances of higher pay scale.

23. In so far as the contention that having performed duties of Enquiry Clerks and existence of the post the work charged Beldars are entitled for being regularised as Enquiry Clerk in Group 'C', cannot be countenanced. As the post of Enquiry Clerk falls in Group 'C' category, there cannot be a question of regularising the work charged Group 'D' employees as Group 'C' de hors the recruitment rules. Although there is no post of Enquiry Clerk but yet for the post of LDC recruitment rules prescribe selection through SSC. Regularisation cannot take place de hors the recruitment rules. One has no vested or indefeasible right to be appointed to a particular post or regularisation as held by the Constitutional Bench of the Apex Court in Shankarsan Dash v. Union of India & Ors., 1991 (3) SCC 47. Moreover, in an identical situation the coordinate Bench of this Court in Harish Chander Kala's case (supra) has also rejected the plea of the applicant.

24. Even the High Court of Delhi while disposing of CWP-6552/01 has also observed that the modified award does not contain any direction for regularisation of the applicants as Enquiry Clerk. In this view of the matter as the relief of the applicants for regularisation against Group 'C' posts is de hors the rules, the same cannot be countenanced and is liable to be rejected.

25. In so far as the contention as to the impugned orders whereby respondents have directed their officers not to assign the work of higher category or to utilise the applicants as Enquiry Clerks is concerned, being a policy decision which has not been proved to be either malafide or



arbitrary the same cannot be interfered with by this Tribunal as held by the Apex Court in Director, Lift Irrigation v. P.K. Mohanty, 1991 (1) SCALE 399. Applicants have volunteered to offer their services to perform the duties of Enquiry Clerk on short term basis and on a non-existing post of Enquiry Clerk they cannot be regularised. In absence of any policy or scheme of the respondents to regularise the Beldars or any work charged Group "D" employees in a judicial review will not transgress our jurisdiction to encroach the territory of executive in absence of any established malafides or arbitrariness. In absence of any post of Enquiry Clerk applicants cannot be regularised.

26. In so far as the question of pay and allowances to the applicants is concerned, they are being paid the pay scale of Enquiry Clerk on the strength of the interim order passed by this Tribunal on 31.5.2001 and 12.11.2001 and as arrears of pay as per notification of the Government the same shall be paid to them.

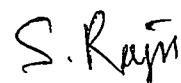
27. Another contention of the applicants taking resort to the decision of the High Court in CWP-6552/01 that as per the circular dated 4.7.88 if a muster roll casual labour had worked for 242 days in the higher category for two consecutive years he is entitled for regularisation in that category. We have scanned through the pleadings and find that the applicants have failed to take any such plea in their OAs and as such the same cannot be examined herein.

620

28. In the result, we do not find any legal infirmity in the orders passed by the respondents. The OAs are bereft of merit and are accordingly dismissed.

29. Interim orders passed on 31.5.2001 and 12.11.2001 in OA-1426/2001 and OA-3095/2001 respectively and continued from time to time are hereby vacated. However, it would be open to the applicants to assail their grievance for regularisation in terms of circular dated 4.10.88 in a separate proceedings in accordance with law, if so advised. No costs.

30. Let a copy of this order be placed in the case file of OA-3095/2001 also.



(Shanker Raju)
Member (J)

'San.'



(V.K. Majotra)
Member (A)

87