

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(17)

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O.A. NO.3302/2001

NEW DELHI, THIS 10 TH DAY OF SEPTEMBER 2002

Hon'ble Shri Govindan S. Tampi, Member (A)

1. All India CPWD (MRM) Karamchari Sangathan (Regd) through its President, Shri Satish Kumar, 34-D, DIZ Area, Sector 4, Raja Bazar, New Delhi.
2. Sona Devi, Beldar
3. Kunwar Singh, Motor Lorry Driver
4. Gorakh Nath, Beldar (HR)
5. Ram Pal, Beldar
6. Badi Bai, Beldar (MR)
7. Ram Ashish, Beldar (MR)
8. Ram Bhateri, Beldar
9. Upender Kumar, Fitter/Plumber
10. Sushma Sharma, Khalashi
11. Ved Prakash, MLD (HR)
12. Balvir Singh, MLD (HR)
13. Santosh Shankar, MLD (HR)
14. Gyan Singh Rawat, MLD (HR)
15. Rambir Singh, Messenger (HR)
16. Devendar Bahadur, MLD (HR)
17. Hom Nath, MLD (HR)
18. Padam Bahadur Thapa, MLD (HR)
19. Balbir Singh, Messenger
20. Heera Ballabh Bhatt, Messenger
21. Mahesh Chand, Messenger (HR)
22. Rajpal Yadav, Messenger (HR)
23. Devebder Singh Negi, Messenger (HR)
24. Jug Raj Singh, MLD
25. Hari Bhagwan, MLD
26. Balwant Singh, MLD
27. Suresh Prasad, Beldar
28. Ghughli Ram, Beldar
29. Kailash Chand, Beldar
30. Parsu Ram Manjhi, Beldar
31. Shatrughan Prasad, Beldar
32. Prakash, MLO
33. Puran Bahadur, MLD

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34. Suresh Kumar, Beldar (MR)
35. Rajinder Singh, Messon,
36. Triveni Prasad Dubey, Beldar (MR)
37. Ramesh Chandra, MLD
38. Vimla Devi, Mali
39. T D Suresh, MLD
40. Bijender Kumar, MLD
41. Kunwar Pal, MLD
42. Savitri Devi, Mali
43. Bans Rupan Singh, Beldar
44. Mam Chand, MLD
45. Rishi Pal Singh, MLD
46. Narendra Singh, Beldar cum Messenger
47. Anil Kumar, Beldar cum Messenger
48. Jai Parkash, Beldar
49. Satish Kumar, Beldar
50. Lachman, Beldar
51. Mahipal Singh, Beldar

(Applicant Nos 2 to 51 are care of Sl. No. 1 above address)

(By Ms Shilpa Chohan, Advocate)Applicants.

V E R S U S

1. Union of India through its secretary
Min. of Urban Development, Poverty Alleviation,
Nirman Bhawan, New Delhi
2. The Director General (Works)
CPWD, Nirman Bhawan, New Delhi
3. The Superintending Engineer,
Co-ordination Circle (Elec)
CPWD, IP Bhawan, New Delhi.
4. The Superintending Engineer,
Co-ordination Circle (Civil)
CPWD, IP Bhawan, New Delhi.

.....Respondents

(By Ms Prema Priyadarshini, proxy counsel)

O R D E R

By Hon'ble Shri Govindan S. Tamai, Member (A)

Regularisation of the applicants in the jobs
being held by them and grant of pay and allowances
as being given to regular staff from the dates of their
initial employment are the reliefs sought for in this O.A.

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2. Heard Ms Shilpa Chohan and Ms Prema Priyadarshini learned proxy counsel appearing for the applicants and the respondents respectively.

3. While applicant No. 1 in the Union of lower category of employees of the CPWD, applicants 2 to 51 are employees with CPWD as muster roll / daily rated and hand receipted workers. Instructions do exist for considering muster roll employee for regularisation, instead of getting freshers from Employment Exchange. Muster Roll employees with over one year service would have to be taken as work charged staff, on way to regular absorption. The applicants are working as Muster Roll basis as Beldars, Peons, Watchmen, Motor Lorry Driver etc. for long periods - as much as twenty years in some cases - still they are being discriminated only on the ground that they are muster roll workers. The benefits being denied include leave, pensionary benefits, TA/DA, GPF etc. This discrimination is totally violative of the constitutional guarantee in articles 14,16,21 etc. of the Constitution Hon'ble Supreme Court had in the case of Surinder Singh (Writ Petitions No. 563-70/83) directed the grant of regularisation to all the daily rated workers who had put in more than six months. This was extended to muster roll workers as well. Respondents however, did not ~~take~~ give effect to the directions of the Hon'ble Supreme Court and the position continued even after advice of the DoPT to do needful. Following the above the applicant union moved the Hon'ble Supreme Court and had got the orders issued for '91 workers, on 6.5.91, with consequent benefits but no action has been taken in the case of the applicants in this case. Similar reliefs were granted by the Tribunal in OA Nos. 150/99 on 15.11.2000, 1923/99 on 28.3.2001 and 845/2000 on 6.6.2001 repelling the protest by the respondents that vacancies were not available and holding that there was ample work. Hence this OA.

4. Grounds raised in this OA are:

- i) applicants were entitled for regularisation from the date of completion of one year.
- ii) keeping the applicants in their present position was illegal in view of Hon'ble Apex Court decisions in A.K. Jain Vs UOI (1987 Supp. SCG 497), Surendar Singh

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and Another Vs Engr. in Chief CPWD & others (1986 SCC 639) and Jacob Puthuparambil Vs Kerala Water Authority (1991 - 1 SCC 28)

which

- iii) denial of facilities/ violated fundamental rights.
- iv) doctrine of equal pay for equal work should have been adopted ;
- v) similar relief had already be given in a few other OAs;
- vi) benefits of regularisation should be date from the completion of one year's service as their appointment has been regular, having been sponsored through Employment Exchange.

5. In view of the above , the OA deserved to succeed fully with all consequential benefits , plead the applicants. The above was forcefully reiterated by Ms. Shilpa Chohan, learned counsel, during the oral submission.

6. During the hearing for admission, the applicants have been granted interim relief against disengagement, which continues to be in force.

7. Respondents oppose the OA as well as MA No. 2740/2001 filed by the applicant. According to them as the applicants were working in different kinds of jobs, of different categories they cannot have a common cause to file a combined petition. Against the points in RA , it is argued that as Muster roll recruitment had been totally banned w.e.f 19.11.85, the petitioners cannot have a case for regularisation. Further casual worker cannot seek parity in remuneration with regular staff. (Shanker Prasad Vs CPWD & Others). Appointment to Govt. staff are being made in accordance with recruitment rules and not by regularising earlier staff, engaged on muster roll basis. Further as this OA involved disputed questions., the matter should go before an Industrial Tribunal in terms of SAIL Vs National Union of Water Front Workers & Others (2001 (7) SCC. 1). The applicants in this case have been appointed as muster roll workers after 19.11.85 when such recruitments were banned , their engagement was illegal and the same did not vest in them any right for regularisation. Respondents in the circumstances are not guilty of any ~~reg~~ irregular act OA further

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suffered from non-joinder and misjoinder of parties as they come from different streams and work in different divisions, all of whom have not been arranged as respondents. Regularisation can be claimed only against vacancies and therefore availability of vacancies is an important aspect which goes against the applicants. Their claims for parity in pay is also illegal and cannot at all be considered. No appointment can be ordered in violation of Recruitment Rules and that is what exactly the applicants seek. The only relief that can be sought is their consideration for regularisation, when the vacancies arise. Respondents also state that there was no provision for automatic regularisation and not even the Hon'ble Supreme Court had permitted the same. As there was a ban on recruitment on muster roll basis in CPWD and as the engagement of the officers after 19.11.85 was irregular they cannot claim regularisation. All the above were forcefully reiterated by Ms. Prema P Priyadarshani learned counsel for the respondents, who also referred to a few decisions in support of her pleas, including those of Central Welfare Board & Others Vs Anjali Bepari (Ms) and Others (1996 10 SCC 133 and UP Madhyamic Shiksha Parishad Shramic Sangh & Another (1996 7 SCC 34).

8. I have carefully considered the rival contention. While the applicants claim regularisation on the basis of their long record of service, the respondents point out that as recruitment against the muster roll was not authorised after 1985, those like the applicants who were recruited after (1995) had no right for regularisation. Both the sides have also relied upon the number of decisions, which according to them, would support this case. It is not disputed that the applicants have been working with the respondents for considerably long time in quite a number of cases beyond ... ten years. That being the case it would be difficult to countenance the plea that their original engagements were illegal and therefore

they have no right at all for regularisation. At the same time, it is a settled principle in law that regularisation can only be against sanctioned posts and therefore availability of vacancies would be crucial determinant in this matter and that is a point which has been indicated by the respondents. It may not be in order for the Tribunal to issue direction to the respondents to create as many posts as would be required to accommodate them; as the said would be ^{an inflexible} ~~under~~ a matter of policy which we cannot ~~entertain~~. In the above circumstances, it would be relevant to refer to the decision of the Tribunal dated 28.3.2001 in OA 1923/99 in similar circumstances, which records as below:

"the respondents to verify from their records the number of vacant posts in the category of employees to which applicants 2-7 belong i.e. Motor Lorry Driver."

2. After verification of the necessary particulars pertaining to the applicants, they should consider regularisation of their services against the vacant posts, subject to their suitability and fulfilment of the terms and conditions as laid down in the Rrs. Taking into account the facts and circumstances of the case, particularly that the respondents themselves have not denied the fact that they have continued the applicants as Muster Roll employees for much more than a decade, they shall if necessary grant age relaxation as provided under the Rules."

and to direct that the applicants could be considered in accordance with rules keeping in mind their long service and subject to availability of vacancies as and when they arise. No further relief can be considered for being granted.

9. In the result, the OA succeeds to a marginal extent and is accordingly disposed of. Respondents are directed to consider the cases of the applicants for their regularisation, strictly in accordance with rules and in the order of their interse seniority, in each category and subject to the availability of vacancy. This direction is being issued, keeping in mind the long service they have put in and ~~the~~ it would be harsh and unreasonable to deprive them of their livelihood. Till such time they are regularised they may be continued and their services are not dispensed with. To that limited extent the interim relief granted is made absolute. However, the applicants' request for parity in pay and allowances with the regular staff

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cannot be endorsed in law and as such are dismissed.
No costs.

10. I would also record that the various decisions referred to by both the parties have also been borne in mind while passing the above order.

(Govindan/S. Tampi)
Member (A)

Patwal/