CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2615/2000
OA No.572/2001
OA No.576/2001

New Delhi this the 18th day of October, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.2615/2000

Chet Ram Son of Shri Bhagwan Dass,
R/o Sri Ram Institute of Industrial
Research, E-1 Sri Ram Colony,
19, University Road,
Delhi-110 007. -Applicant

(By Advocate Shri V.P. Trikha)

-Versus-

1. Director General, ESIC,
Kotla Road, New Delhi.

2. The Director, Medical,
ESIC, Bassai Darapur,
Ring Road, New Dehi-110 015.

3. Medical Supdt.,
ESIC, ESI Hospital Complex,
Bassai Darapur, Ring Road,
New Delhi-110 015. -Respondents

(By Advocate Shri G.R. Nayyar)

OA No.572/2001

Chander Pal Son of Shri Dorilal,
R/o L-94, Anand-bas,
Shakurpur, Delhi-110034. -Applicant

(By Advocate Shri V.P. Trikha)

-Versus-

1. Director General, ESIC,
Kotla Road, New Delhi.

2. The Director, Medical,
ESIC, Bassai Darapur,
Ring Road, New Dehi-110 015.

3. Medical Supdt.,
ESIC, ESI Hospital Complex,
Bassai Darapur, Ring Road,
New Delhi-110 015.

4. The Medical Supdt.,
ESI Corporation Hospital,
Sector 15, Rohini,
Delhi-110 085. -Respondents

(By Advocate Shri G.R. Nayyar)

OA No.576/2001

Sheela wife of Sh. Chander Pal,
R/o L-94, Anand-Bas, Shakurpur,
Delhi-110 034. -Applicant

(By Advocate Shri V.P. Trikha)

-Versus-

1. Director General, ESIC,
Kotla Road, New Delhi.

2. The Director, Medical,
ESIC, Bassai Darapur,
Ring Road, New Dehi-110 015.

3. Medical Supdt.,
ESIC, ESI Hospital Complex,
Bassai Darapur, Ring Road,
New Delhi-110 015.

4. The Medical Supdt.,
ESI Corporation Hospital,
Sector 15, Rohini,
Delhi-110 085. -Respondents

(By Advocate Shri G.R. Nayyar)

COMMON ORDER

By Mr. Shanker Raju, Member (J):

As these OAs involve common question of law, they are disposed of by this common order.

2. The claim of the applicants in these OAs is in pursuance of their disengagement as casual sweepers working with the respondents and they have sought accord of temporary status and regularisation.

3. Briefly stated, in OA-2615/2000 the applicant was sponsored through employment exchange and was engaged as a casual sweeper and had worked for 380 days. His services were dispensed with on 8.3.2000.

4. In OA-572/2001 the applicant having worked for 350 days, instead of being accorded temporary status and regularisation his services have been dispensed with w.e.f. 1.7.99.

5. In OA-576/2001 the applicant had worked as a casual sweeper for 250 days and his services have been dispensed with by an oral order dated 29.7.99.

6. The learned counsel for the applicants in OA-2615/2000 has filed MA-1673/2001 under Order 11 Rule 1 of Cr.PC for delivery of interrogatories. As the provisions of Cr.PC are not applicable to the provisions of the Administrative Tribunals Act, 1985 the MA is not maintainable and is rejected. However, the respondents have already filed their counter reply giving the vacancy position which was an attempt of the applicant to know from the respondents. The learned counsel for the applicant contended by placing reliance on reply of the respondents filed in OA-1685/99 wherein it is admitted by the respondents that a number of sweepers have to be employed as substitute on account of regular absenteeism of regular sweepers and each day on an average 8-15 persons are engaged. It is stated that as per the DOPT instructions having completed 240 days service and despite availability of work the respondents have dispensed with their services despite the fact that they are entitled for accord of temporary status. It is also stated that in pursuance of the decision of this Court in other OAs the respondents have accorded temporary status to similarly circumstance casual sweepers but a differential treatment has been meted out to them in violation of Articles 14 and 16 of the

Constitution of India. Having placed equally the applicants cannot be meted out unequal treatment. It is also stated that the respondents have sufficient posts to accommodate the applicants for regularisation and it is contended that there are 200 posts of sweepers lying vacant with the respondents. The learned counsel for the applicant has further placed reliance on a decision of this court in OA-1685/99 with connected OAs in the matter of Kamal V. ESIC & Others, decided on 18.1.2000 wherein casual workers who have approached the court for temporary status and regularisation directions have been issued to verify their records and claim of their being rendered requisite service for the purpose of accord of temporary status and regularisation. The applicants claim benefit of this judgement as well.

7. On the other hand, strongly rebutting the contentions of the applicants the learned counsel for the respondents contended that R-3, i.e., the Medical Superintendent of the Hospital is the competent authority to engage or disengage substitute sweepers on daily wages and R-2 is the competent authority to employ sweepers on regular basis in accordance with the statutory regulations. Due to large scale absenteeism amongst the regular sweepers, substitute sweepers have to be employed on da-to-day basis in order to upkeep the cleanliness in the hospital. It is stated that the Hospital has 98 posts of Sweepers out of which 94 are filled up in accordance with the statutory regulations governing these posts and on an average 8-15 persons have to employ each day. It is also stated that at present 104 persons are employed and six persons are already working over and above the required

manpower. It is stated that no junior of the applicants has been employed on casual basis as sweeper as well as outsiders or freshers and in absence of any post and work the claim of the applicants would be considered for engagement on availability of work and if the recruitment for the post is taken in the hospital. It is also stated that the applicants in the absence of posts and work have no right even for engagement and accord of temporary status and regularisation.

8. I have carefully considered the rival contentions of the parties and perused the material on record. As regards the working of the applicants beyond 240 days which entitle them for accord of temporary status is not disputed by the respondents. The services of the applicants have been dispensed with neither arbitrarily nor with any ulterior motive. This has been done in compliance of the directions of this court to accord temporary status to 15 casual workers who have approached this court. The action of the respondents cannot be found fault with to that extent.

9. As regards re-engagement of the applicants is concerned, I find that the respondents have themselves stated that on an average due to absenteeism of regular sweepers 10-12 substitute sweepers are engaged. Although we note that no junior to the applicants has been engaged and accorded temporary status or regularised.

10. As regard the contention of the applicants that there are 200 posts of regular sweepers with the respondents is concerned, the same has not at all been

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substantiated by them by way of producing any documents to that effect. Rather the contention of the respondents made on affidavit that they had only 98 sanctioned posts against which 103 sweepers are working appears to be sound and as per the record. In this view of the matter and having regard to the fact that the respondents have no availability of work of the kind the applicants were performing prior to their disengagement and the fact that the work is available on account of habitual absenteeism of regular sweepers the respondents shall consider the case of the applicants for re-engagement as and when work of casual nature as sweeper is available by giving preference to the applicants to freshers and outsiders.

11. As regards the accord of temporary status and the regularisation is concerned, in case of availability of the posts in Group 'D' as sweeper in any of the organisation of the respondents, the respondents shall consider and verify the records of each applicant as to fulfilment of terms and conditions as per the DOPT memo dated 10.9.93 and thereafter to confer temporary status and other consequential benefits.

12. In the result, the present OAs are disposed of with a direction to the respondents to consider the claims of the applicants for accord of temporary status on completion of 240 days and further regularisation, as per DOPT OM dated 10.9.93 and in case they are found eligible for grant of temporary status, grant the same and further regularisation subject to availability of regular posts.

(14)

In the meantime, if work of casual nature is available with the respondents the applicants shall be re-engaged in preference to freshers, juniors and outsiders. No costs.

(Shanker Raju)
Member (J)

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Attested

Bujwari

C.O.

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