

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO767/2001

NEW DELHI THIS THE 3 DAY OF ^{June} ~~May~~ 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. Ramesh Kumar S/o Late Sh. Jamuna Prasad
R/o 101, Anand Gram, Kusht Ashram, Tahirpur,
Shahdara, Delhi
2. Virender pratap Singh S/o Sh. Dev Singh
R/O 741 Shanti Kusht Sewa Samiti, leprosy Complex,
Tahirpur Shahdara, Delhi
3. Raja Thapa s/o Sh. Prem Bahadur,
R/o 404, Ekta Vihara, Kusht ashram,
Tahirpur, Shahdara, Delhi.

.....Applicants
(By Shri Yogesh Sharma, Advocate)

VERSUS

1. Govt. of NCT through the Chief Secretary,
Old Secretariat, Delhi
2. The Director,
Directorate of Social Welfare, I Canning Lane, KG
Marg, New Delhi.
3. Sr. Supdt. (Admn.)
Directorate of Social Welfare,
GLNS Complex, Delhi Gate, New Delhi

.....Respondents.

(By Ms. Sumedha Sharma, Advocate)

O R D E R

Applicants in this OA are aggrieved by the refusal of the respondents to regularise them against Group 'D' posts, as well as the latters insistence that the concerned vacancies would be filled only from those registered with Employment Exchange.

2. Heard Sh. Yogesh Sharma and Smt. Sumedha Sharma, learned counsel for the applicants and the respondents respectively.

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3. All the applicants are working on part time basis, in various Social Welfare Department run homes - one from October 94 and the other from January and May 96 as dressers and chowkidar - at the salary of Rs. 788/-p.m. They were appointed after due? selection and are working for more than 8 hours daily - as dressers and chowkidars. In terms of GNCT's notification dated 9.9.85, 50% of the vacancies are to be filled by direct recruitment and 50% from part time employees with more than 5 years service. The applicants who are working full time and continuously are to be treated as full time workers and deserved to be considered against 50% quota. Still the applicants request for consideration has been rejected with direction that they should get their name registered with and sponsored through Employment Exchange, which was illegal and arbitrary . They are also entitled for grant of temporary status as well as regularisation in terms of DoPT's scheme of 10.9.93, relating to Casual Labourer. But the same has not happened. Hence the O.A. Grounds raised by the applicants are that as they had been decided on 30.6.2000) and that the respondents inaction in not preparing the seniority list of part time workers was improper. The above pleas were forcefully reiterated by Sh Yogesh Sharma, learned counsel for the applicant.

4. In the reply filed by the respondents and stressed by Smt. Sumedha Sharma, learned counsel for the respondents it is pointed out that the applicants do not have any case and they had been correctly advised to get themselves registered through Employment Exchange , on the basis of their qualification. Being only part time workers, they have no right for regularisation against any Group D post. Issue of regularisation would arise only when

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vacancies in Group 'D' levels are available and then the case of the applicants would be considered, subject to their eligibility in terms of the relevant recruitment rules. Being part time workers the applicants are not at all covered by the DoPT's Scheme for grant of temporary status and regularisation of Casual Labourers. Further there were no sanctioned posts of dressers at ?11 in the Deptt. and even direct recruitment cannot be considered. OA in the circumstances, would merit, dismissal, prays Smt. Sharma.

5. I have carefully considered the matter. Applicants in this case who are part time workers are seeking grant of temporary status and regularisation against a Group 'D' post in the organisation of the respondents. The latter on the other hand indicate that they have no post to accommodate the applicant and that being part time workers, their case would not at all be covered by the DoPT's Scheme of 10.9.93. They also aver that the case of one of the applicants, would be considered, as and when vacancy arises, but subject to law and instructions on the subject. I also recall that the Principal Bench of the Tribunal itself had in a few cases, similar to the present OA had held in favour of the applicants, and directed that the applicants are entitled for grant of temporary status and regularisation in turn. However, the law has been settled by the Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Mohan Pal, etc. etc. [2002 (4) Scale 216] dealing with DoPT's OM No. 51016/2/90 Estt (C) dated 10.9.93 on Casual Labourers dated 10.9.93 and in the case of Punjab State Electricity Board and Anr. Vs Wazir Singh [JT 2002(3) SC 49] held that the benefit of the Scheme is available only on fulfilment of two conditions i.e. that the applicants had completed requisite period of 206 or 240

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days in the case of DoPT's OM dated 10.9.93 (and 500 days in the case of Punjab Electricity Board) and the applicants were in position on the date when the scheme was introduced i.e. 10.9.93 and 1991. Both the conditions were therefore required to be fulfilled before the benefit could be extended. And with the Hon'ble Supreme Courts pronouncement, this has become the law. The applicants would have completed the requisite period of 240 days or 206 days on part time basis, but they were not in position, when the scheme for grant of temporary status and /or regularisation was introduced on 10.9.93. They would therefore be barred from the benefit of the scheme, which is what the applicants are seeking in this OA. Their request cannot be entertained and the respondents' action cannot be assailed in law.

6. In the above view of the matter, and in view of the specific finding of the Hon'ble Supreme Court, the applicant's case has no merit at all. It is accordingly dismissed. No costs.

Patwal/

Govindan S. Tampli
Member (A)