

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1392/1999

26

New Delhi this the 4th day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Prem Chander,
S/O Shri Jamuna Dass,
working as Enquiry Clerk,
at Kasturba Nagar Enquiry,
Office, CPWD, New Delhi.

..Applicant

(By Advocate Shri S.M. Garg)

VERSUS

1. Central Public Works Department
through its Director General (Works)
Nirman Bhawan, New Delhi.

2. The Executive Engineer,
Asian Games Civil Divn. -3,
CPWD, Jawaharlal Nehru Stadium,
Lodhi Road Complex, New Delhi.

3. The Executive Engineer,
P-Division, CPWD, Andrews Ganj,
New Delhi.

.. Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

The applicant is aggrieved by ^{the P} inaction of the respondents in not regularising his services as Enquiry Clerk (E-C) or Lower Division Clerk (LDC). He has prayed for a direction to the respondents to regularise his services and give him all consequential benefits in the grade of LDC or E-C. He has also prayed that a direction may be given to pay him the salary at par with his counter-parts engaged on regular basis in the grade of Clerk with arrears.

2. The brief relevant facts of the case are that the applicant was engaged by the respondents in April, 1985 on Hand-receipt for typing jobs in P-Division of CPWD, New Delhi. He states that this position continued till January, 1987 but from February, 1987 he was employed on job basis till 16.11.1987 when his services were disengaged. He had made a representation against his disengagement. Later, he was reengaged with effect from 30.5.1988 on Hand Receipt/daily rate basis. Shri S.M.Garg, learned counsel for the applicant, has relied on the letter dated 26.5.1988 and has submitted that the applicant should be deemed to have been re-engaged w.e.f. 30.5.1988 on ad hoc basis. We note from this that this is an inter- Departmental communication and no further order has been placed on record which has been issued by the respondents to show that the applicant has been appointed on ad hoc basis. Therefore, we are of the view that this letter will not assist the applicant to substantiate his claim that he has been appointed on ad hoc basis w.e.f. 30.5.1988 and to this extent we agree with the submissions made by the learned counsel for the respondents in this regard. It is further relevant to note from the subsequent letter dated 3.6.1988, annexed by the applicant himself, that instead of the applicant being appointed on ad hoc basis as recommended by one officer in the fixed salary of Rs.1150/-PM, the officer was directed to appoint the applicant on payment of daily rate wages @ Rs.30.10 per day. From these orders, it is, therefore, not possible to agree with the contentions of Shri S.M.Garg, learned counsel for the applicant that the applicant had been appointed on ad hoc basis. On the other hand, in the facts and circumstances of the case, we agree with the contention of

21

Shri A.K.Bhardwaj, learned counsel for the respondents that the applicant had only been engaged on daily rate /job basis and not on ad hoc basis.

(28)

3. Learned counsel for the applicant has relied on the attendance sheet issued by the Executive Engineer working with the respondents, regarding the period when the applicant had worked from 30.5.1988 to 31.12.1997 (Annexure A.6). He has submitted that even thereafter, the applicant is still continuing in service till date on daily rate /job basis. His contention is that the applicant's services should, therefore, be directed to be regularised in the grade of LDC or E-C. He relies on the judgement of the Hon'ble Supreme Court in Gujrat Agricultural University Vs.Rathod Labhu Bechar and Ors. (2001 (1) Scale 270) and the judgement of the Tribunal in Dr.Jitender Singh and Ors. Vs.Union of India through the Secretary, Ministry of Health and Family Welfare and Ors.(OA 1259/1990 with connected cases) decided on 8.10.1991, copies placed on record. ^{The R} Appeal against this order filed by the UOI has been granted with certain modifications relating to fixation of seniority of the applicants before the Tribunal in those cases. Learned counsel for the applicant has submitted that similarly the applicant in the present case should also be directed to form a "seperate block" for the purpose of regularising the services of the applicant as LDC/E-C.

4. We have seen the reply filed by the respondents and heard Shri A.K.Bhgardwaj, learned counsel. Learned counsel for the respondents has submitted that there is no Rule or instruction regarding regularising the services ^{of a} Group 'C' employee, like the applicant. The respondents have, however, not denied the fact that the applicant was engaged

18.

as daily rate wages on job wages. They have stated that they had decided to engage the applicant for typing work on job basis as it was ^{more} economical than to get ^{it} typed from the open market. They have also stated that the applicant has been engaged and assigned the job of E-C/LDC to do the typing work etc. during the relevant period from 30.5.1988 and he is also continuing in the same capacity even today. They have, therefore, submitted that the applicant can be regularised only in accordance with the relevant rules and instructions, subject to his selection through ~~the~~ Staff Selection Commission (SSC). (29)

5. With regard to the selection as Clerk through SSC, learned counsel for the applicant has submitted that at this stage the applicant is over aged. His date of birth shown is 30.6.1963 and he has submitted that when he was engaged as E-C/LDC on job basis on 30.5.1988, he was within the age limit.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. It is seen from the relevant facts of the case that the applicant has been engaged by the respondents on daily rate job basis for a long spell of more than 12 years and he is still continuing till date. It is also seen from the reply filed by the respondents that they have continued this arrangement as a matter of economic prudence on their part. Learned counsel for the respondents has clarified that the rate of Rs.30.10 paisa per day has been revised. This fact has not been denied by the learned counsel for the applicant. However, the claim of the applicant is that he should be paid the pay of Clerk as he is discharging the duties and responsibilities of E-C/LDC for the relevant

30

period.

7. Taking into account the facts and circumstances of the case, we are of the view that for the period, the respondents have taken work from the applicant as E-C or LDC, he would be entitled for the additional remuneration at par with the persons discharging the duties in the posts of clerks/LDCs who were directly recruited in accordance with the relevant rules and instructions. However, we make it clear that the arrears of such wages, if any, after ascertaining the period for which he is due to be paid additional remuneration shall become payable only from two months from the date of filing of the present OA i.e. from 3.8.1999. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order.

8. With regard to the second claim of the applicant for regularisation of his services as E-C/LDC on similar lines as granted by the Tribunal in Dr. Jitender Singh's (supra), we find that the facts in that case are distinguishable from the present case. In the present case, the applicant has been appointed only on daily rate job basis and not on ad hoc basis as in the case dealt with by the Tribunal in the order dated 8.10.1991(OA 1259/1990). It is also relevant to note that during the time when the applicant was engaged an daily rate on job basis, he could have applied to the SSC for regular selection as Clerk and could have been selected subject to his fulfilment of the eligibility conditions. He has not

done so for the past several years and presently he is over aged. Therefore, the only direction that can be granted taking into account the particular facts and circumstances of the case is that, in case the applicant applies for consideration for selection through the SSC in the next selection to be held by them, the respondents shall consider granting him suitable age relaxation for the period he has rendered service as E-C/LDC. The competent authority shall consider such a recommendation sympathetically in accordance with the relevant rules and instructions. In case the applicant qualifies in the test as given above, he shall thereafter be entitled to the pay scale applicable to the E-C/LDC. in accordance with the rules.

(31)

9. The O.A. is disposed of in terms of Paras 7 and 8 above. No order as to costs.

(Govindan S.Tampi)
Member(A)
sk

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)