

Central Administrative Tribunal, Principal Bench.

O.A. 917/99

with

O.A. 24/99

New Delhi, this the 30th day of October, 2000

Hon'ble Mr. Kuldip Singh, Member (J)

Hon'ble Mr. M.P. Singh, Member (A)

O.A. 917/99

Harish Chander Kala
R/o B-135, Khajuri Khas,
Delhi-94.

...Applicant

By Advocate: Shri S.M. Garg.

Versus

1. Central Public Works Department
Through its Director General (Works),
Nirman Bhawan,
New Delhi-110 001.

2. The Executive Engineer
Central Secretariat Division, CPWD,
South Block,
New Delhi.

...Respondents

By Advocate: Shri G. Giri.

O.A. 24/99

1. Devender Singh S/o Late Shri Sultan Singh
working at Vithal Bhai Patel House,
Rafi Marg, New Delhi and
R/o 33-C Pocket-A MIG Flats,
Dilshad Garden, Delhi-95.

2. Darshan Lal S/o Shri Sikandar
working at Vithal Bhai Patel House,
Rafi Marg, New Delhi and
R/o 172, Kamaruddu Nagar,
Nangloi, Delhi-41.

3. Umakant Sharma S/o Shri Surender Pal Sharma
working at Vithal Bhai Patel House,
Rafi Marg, New Delhi and
R/o C-326 Sector-22
Noida.

4. Kuldeep Singh S/o Shri Anand Singh
working at Vithal Bhai Patel House,
Rafi Marg, New Delhi and
R/o 402 Pocket-Q,
Dilshad Garden, Delhi-95.

...Applicants

By Advocate: Sh.S.M. Garg.

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Versus

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1. Central Public Works Department
Through its Director General (Works),
Nirman Bhawan,
New Delhi-110 001.

2. The Executive Engineer
Parliament Works Division-II,
Vittal Bhai Patel House, Rafi Marg,
New Delhi. ... Respondents

By Advocate: Shri G. Giri.

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

By this common order, we are disposing of two OA bearing Nos. 917/99 and 24/99. In both the cases, the applicants, who were initially appointed as Beldars were deputed to work as Enquiry Clerks. They have submitted that though they are discharging the duties of Enquiry Clerk for the last several years, they are being paid the salary of Beldar. Therefore, they have prayed that a direction may be issued to the respondents to pay them the salary attached to the post of Enquiry Clerks. The second part of the relief of the applicants is that they should be regularised as Enquiry Clerks.

2. The respondents are contesting the OA. Shri Giri, learned counsel for respondents has submitted that as far as applicants prayer for payment of salary in the scale of Enquiry Clerk is concerned, the respondents have already issued a Notification and the case of the applicants will also be considered in accordance with that Notification for payment of salary attached to the post of Enquiry Clerk. However in reply to applicants' second claim for regularisation, respondents have submitted that since the applicants are working as Beldars and there is

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no such post of Enquiry Clerk in their department, so they cannot be regularised as enquiry clerks because of the impediment of the Recruitment Rules. Moreover, promotion channel for Seldars is also different as per recruitment rules.

3. However, learned counsel for the applicants submitted that in the past in similar cases, the prayer for regularisation has been allowed. He relied upon one such judgement in OA-440/95 (A.K.Mishra & ors. vs. CPWD & ors) wherein certain directions were given that since the applicants in that case were working as enquiry clerks for a long time, they acquired a vested right for being regularised in view of their length of service.

4. Shri Giri, learned counsel for the respondents also referred to a judgement delivered by a Co-ordinate Bench in OA-431/96 (M. Chandrasekharan & Another Vs. CPWD and Another) in which the Bench held that the observation given in earlier judgments is per incuriam since the aspect of recruitment rules had not been considered in those cases. Concluding para of the judgment in OA 431/96 reads as under:-

" But it is seen from the judgment, that the Tribunal has not kept in view the applicability of the recruitment rules which, in our view, are material for the purpose of appointments and regularisation in the post of Clerks. There is no discussion in this regard. In Sh. Jetha Anand and Others Vs. Union of India and others, Full Bench Judgments CAT Vol.I p.353, (Bahri Brothers) the Principal Bench held that a Railway Servant can be reverted, even if he was promoted and had been working in the promoted post since a long time, if he was not qualified in the selection test for being appointed, as per the relevant recruitment

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rules. The same ratio applies to any post where the post is governed by the recruitment rules.

5. We have considered the rival submissions of the parties on the aspect of regularisation and find that the ratio as applied by the Co-ordinate Bench in OA 431/96 is squarely applicable in the present case also and the applicants cannot be considered for regularisation de hors the rules. However, as regards applicants claim for payment of salary in the pay scale of Enquiry Clerk, we are of the view that since the department itself has issued a Notification dated 9.9.1999 (at page 113 of the paper book), we can direct the respondents to pay applicants salary in the pay scale of Enquiry Clerks.

6. In view of the above, this OA is partly allowed with a direction to respondents that they shall pay salary to the applicants in the pay scale of Enquiry Clerk in accordance with their Notification referred to above. The direction should be implemented within a period of 3 months from the date of receipt of a copy of this order. No costs.

7. Let a copy of this order be placed in OA 917/99 and OA No. 24/99.

(M.P. Singh)
Member (A)

(Kuldip Singh)
Member (J)

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[Signature]
Court Officer
Central Administrative Tribunal
Punjab Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi-110091