

Central Administrative Tribunal
Principal Bench

O.A. No. 1728 of 1998

New Delhi, dated this the 13th April, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri M.L. Dogra,
S/o Shri D.R. Dogra,
R/o D-85, Cali No.4,
Laxmi Nagar, ... Applicant
Delhi-110092.

(By Advocate: Shri S.S. Tiwari)

Versus

1. Union of India through
the Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan, New Delhi.
2. Director General Works,
C.P.W.D., Nirman Bhawan,
New Delhi.
3. Executive Engineer,
Shahdara Central Division,
CPWD-I, I.P. Bhawan,
New Delhi. ... Respondents

(By Advocate: Shri Gajendra Giri)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks regularisation with
consequential benefits.

2. Heard both sides.

3. There is no denial in any rejoinder to the specific averments of respondents in their reply that applicant is engaged by a contractor. Respondents contend that under the aforesaid circumstances, applicant is not an employee of the Dept. and hence he has no enforceable legal right to compel them to regularise him. Reliance

is placed in this connection on the CAT, Cuttack Bench order dated 1.5.98 in O.A. No. 102/98 R.B. Mallick & Ors. Vs. UOI & Ors.

(7)

4. Applicant's counsel, however, relies upon the Hon'ble Supreme Court's ruling in UOI Vs. S. Mukherjee JT 1998 (3) SC 540. A bench of this Tribunal in which one of us {Shri S.R. Adige, Vice Chairman (A)} was a member had occasion to deal with a similar prayer for regularisation filed by one Shri Harbir Singh in O.A. No. 651/98. In the order dated 23.9.98 delivered in Harbir Singh's case (Supra) it was observed that the availability of vacancies against which the respondents in S. Mukherjee's case (Supra) could be regularised was not in doubt. A person can be regularised only if a regular vacancy is available but there is not even any averment in the O.A. that regular vacancies are available against which applicant could be regularised. Hence the ruling in Mukherjee's case (Supra) relied upon by applicant's counsel is distinguishable on facts from the present case. Unless it is established that there are regular vacancies available and identified against which persons can be regularised, no direction of the kind sought by applicant can be issued to respondents. In this connection it is well settled that the Tribunal has no jurisdiction to direct respondents to create posts as the creation/abolition of posts is a matter exclusively with executive competence. If and when suitable vacancies become available it will be open to

applicant to apply for the same along with others, for consideration by respondents, subject to his ability and in accordance with rules and instructions on the subject.

5. The O.A. stands disposed of accordingly in terms of Para 4 above. Interim orders are vacated. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)

Member (J)

Adige
(S.R. Adige)
Vice Chairman (A)

/GK/