

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2152/98

9

New Delhi this the 22nd day of November, 1999.

Hon'ble Shri S.P. Biswas, Member(A)

Shri Sri Chand,
S/o Sh. Asha Ram,
Regional Agmark Laboratory,
W-6, Okhla Industrial Area,
Phase-II, New Delhi-20. Applicant

(through Sh. R. Doraiswami with Sh. Sant Singh,
Advocate)

versus

1. Union of India through
Joint Agril. Marketing Advisor,
Ministry of Rural Development
& Employment, (Dte. of Marketing
& Inspection (B.H.O) New
Secretariat Bldg.,
Nagpur.
2. Asstt. Director,
Regional Agmark Laboratory,
W-6, Okhla Industrial Area,
Phase-II, New Delhi-20. Respondents

(through Sh. K.K. Patel, Advocate)

ORDER

Applicant, a casual labourer, challenges the communication dated 10.08.98 issued by Respondent No.2 by which the respondents have expressed their inability to appoint the applicant in a Group-D post on regular basis. Consequently, applicant seeks relief for issuance of directions to respondents to consider his case for regularisation against regular Class-IV post, treating him at par with other regular employees in respect of the salary/wages and also not to disengage him from services.

10

2. It is the case of the applicant that he is engaged as casual labourer with the respondents since 1985 in the Regional Agmark Laboratory, Okhla, New Delhi. He has put in more than 13 years of continuous service as casual labourer and that his work continues to be satisfactory in all respects. The details of duty hours and the rates of wages paid to him for the periods i.e. December 1995 and 1997 etc. are available in Annexures 2 and 3.

3. It is also the case of the applicant that the job on which his services are being utilised on monthly wage basis are of perennial nature and justifies his continuation in the said post on regular basis. Despite the fact that the applicant is engaged since 1985 in the capacity of casual labourer on monthly wage basis without any interruption whatsoever and that an official (Bhim Singh) junior to him ~~having~~ been given the benefit of ^{enr} regularisation, the applicant is being unduly discriminated for the similar benefits. Such a treatment has virtually forced the applicant to have a legal notice issued to the respondents in February/May 1998, the applicant would ⁿ ~~conted~~. The applicant now apprehends that besides not being paid his wages for three months, his services may even be terminated unjustifiably.

8

11

4. Applicant has also alleged that he has not been paid full daily wages for the duties performed as chowkidar stretching beyond 8 hours a day. As per orders of the respondents, he was required to work as chowkidar when the regular official was on leave. In this connection, he has drawn our attention to the recently paid wage bills dated 05.07.99 relating to applicant's services rendered in June 1999 as sweeper for 22 days and performing the job of chowkidar for 27 days for carrying out the full work of a chowkidar. On this basis, the applicant claims that he should have been paid wages at the rate of Rs. 89.40 per day.

5. Respondents have contended that the applicant is a part time sweeper and is performing sweeping work in the morning hours for 4 1/2 hours only. Since the other officials of the similar category are not willing to perform the duties of watch and ward in the absence of regular chowkidar, the applicant's services have been utilised after certain periods but with additional remuneration. After getting the approval of the competent authority the applicant's services were occasionally utilised to do the work of chowkidar from April 1995. Necessary payments have, however, been made accordingly. In respect of the applicant's claim for regularisation, the respondents would submit that the applicant is not entitled for it as per rules, being a part time

(12)

sweeper. That apart, the applicant is not appointed through Employment Exchange and hence not entitled for conferment of temporary status in terms of instructions of DOP&T vide its O.M. dated 10.09.93.

6. The following three issues fall for determination in this O.A:-

(i) Whether the applicant's claim for regularisation as a Group-D official/sweeper is sustainable in the eyes of law?

(ii) Whether the respondents can legally deny consideration of applicant's claim on the plea that applicant's case should have been sponsored by the Employment Exchange?

(iii) Whether the applicant can legally claim wages for the full day for having worked 8 hours and beyond as chowkidar when the regularly appointed official was away on leave?

7. It is well settled in law that a daily wage employee does not hold a civil post. He/she works only when the work is available. Disengagement of such part time casual labourers, on the basis when the work is not available, cannot be questioned. A daily wager, not appointed according to rules against any regular post, cannot

(13)

legally claim regular appointment. It is also well settled in law that working on ad hoc basis or as a casual labourer over a long period does not vest an employee with the legal right for regularisation. Regularisation can take place only against a Scheme or an order and that too against a regular vacant post which is required to be filled up as per provisions laid down. It also involves fulfilling of certain conditions. Based on this, the applicant's case for regularisation cannot be supported in terms of law. As of now, there is no regular post of sweeper vacant with the respondents against which the applicant could be considered. It has also been held that the Scheme introduced by the DOP&T vide orders dt. 10.09.93 meant for grant of temporary status/regularisation is not applicable to a part time sweeper. Provisions under the said Scheme are meant to cover cases of full time casual labourers. (See Secretary Ministry of Communication & Ors. Vs. Sakhu Bhai & Ors. (CA No. 3318-19 etc. decided by the Apex Court on 02.04.97).

8. We now come to the next point regarding the respondents insistence upon the need for being sponsored by Employment Exchange for regularisation of casual employees. Determination of this issue need not detain us any longer in the light of the judicial pronouncement of the Apex Court in the case of Excise Supdt. Malkapatnam,

(A)

Krishna District Vs. K.B.N. Rao (1996(6) Scale 676 = JT 1996(9) SC 638). In this case their Lordships held that sponsorship through Employment Exchange cannot be considered to be the sole criteria for employment. Publication in the newspaper for wider circulation was considered essential. In the light of the law ^{as aforesaid} ^{law} respondents stand in insisting upon the need for applicant's name being sponsored through Employment Exchange cannot be ^b supported.

^{law}
9. We shall now examine the applicant's claim for payment of full daily wages for the post he has performed duties for 8 hours and beyond. It is seen in Annexure attached with the rejoinder (Rej-II) that the applicant has been paid at the rate of 89.40 per day for 27 days when he had performed the duties of chowkidar when the regular chowkidar was on leave. The applicant's claim in this respect, therefore, gets support from the very actions of the respondents themselves.

10. We also find that the applicant has been performing the jobs of a part-time sweeper for more than 13 years. Both sides, admit that applicant's work is highly satisfactory. The applicant continues to work as a part time sweeper for over a decade and that is sufficient to establish that the respondents do have a need of a sweeper on regular basis. It is, however, for the ^{law}

(15)

respondents to work out the necessity of a permanent/regular post of a sweeper and obtain sanction for that. Admittedly, as a part-time sweeper, the applicant is a senior-most and hence respondents are forbidden to replace his services by juniors or freshers so long work is available in terms of law laid down by the Hon'ble Supreme Court in the case of Inderpal Yadav & Ors. Vs. U.O.I. (1985(2) SCC 648).

11. In the background of the aforesaid details, we partly allow the O.A. with the following directions:-

(a) Respondents shall consider applicant's plea for regularisation as sweeper or comparable Group 'D' post when the same is created/available. This shall be done only in terms of rules/regulations for regulation.

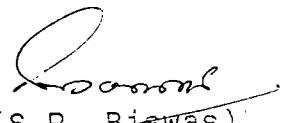
(b) Applicant's services as a part-time Sweeper shall not be replaced by new comers/juniors in terms of law laid down in Inderpal Yadav's case (supra).

(c) Applicant shall be eligible for full days salary/wage while he is

(16)

asked to perform Chowkidar's duties
on the basis they have paid for 27
days in June 1999.

(d) No costs.


(S.P. Biswas)
Member(A)

/vv/