

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 48/98

New Delhi this the 15th Day of February 1999

Hon'ble Shri R.K. Ahooja, Member (A)

Ajay Kumar Sharma,
S/o Sri Des Raj Sharma,
R/o B-5, Sector 39,
NOIDA.

Employed as

Incinerator Operator in
Dr. Ram Manohar Lohia Hospital,
New Delhi-110 001.

Applicant

(By Advocate: Shri B.B. Raval)

-Versus-

Union of India and Others, through

1. The Secretary,
Ministry of Health and Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi - 110 001.
2. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
Govt. of India,
New Delhi-110 001.
3. The Secretary,
Ministry of Labour,
Govt. of India,
Shram Shakti Bhawan,
New Delhi - 110 001.
4. Shri M.K. Malhotra,
Deputy Director (Administration),
Dr. Ram Manohar Lohia Hospital,
Govt. of India,
New Delhi - 110 001. Respondents

(By Advocate: Shri S.M. Arif)

O R D E R

The applicant who was engaged on daily wages basis as Incinerator Operator at Dr. Ram Manohar Lohia Hospital, New Delhi w.e.f. 27th July 1991, is aggrieved by the action of the respondents in giving

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him technical breaks every 89 days and also on account of respondents' failure to regularise his services.

2. The respondents in their reply have stated that technical break is being given to bring the applicant's case in line with other daily wages employees. As regards regularisation, they submit that no post of Incinerator Operator has been sanctioned and hence the services of the applicant cannot be considered for regularisation.

3. I have heard the counsel. Shri B.B. Raval pointed out that the respondents have issued the order dated 22.12.1997 regarding the technical break only after the applicant made his representations for regularisation. He also pointed out that in the past, the respondents had regularised the services of various Grade 'C' ad hoc staff. The applicant was also eligible to be considered for the post of L.D.C. or any other Group 'C' post since he had the requisite educational and technical qualifications and such posts keep falling vacant from time to time.

4. It is an admitted position that no post of Incinerator Operator has so far been created. This is in itself somewhat surprising as incineration of hospital wastage is an indispensable requirement. The long engagement since 1991 of the applicant is also indicating of the perennial nature of the work for which he is employed. Nevertheless, as held by

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the Supreme Court in State of U.P. Vs. U.P.
Madhyamik Shiksha Parishad Shramik Sangh & ors.,
1996(1) SLR 303, the creation of a post is a
pre-condition of a regular appointment and unless
posts are created no direction can be given for
regularization of a casual or adhoc employee.
Similarly, in respect of other posts of LDC or
equivalent, the appointments have to be made in
accordance with relevant recruitment rules and if
such posts are advertised it is upto the applicant to
apply for the same.

5. The applicant is, however, on former
ground as regards the question of technical break.
It is an admitted position that since 1991 till the
issue of the impugned order no such technical breaks
were imposed. It is not clear as to how the
position has changed since then. The respondents
have said nothing more than that the practice
prevails in respect of other daily wagers and hence
the impugned order has been issued to bring about
uniformity. This is not sufficient in itself to
change the practice of over six years. Admittedly,
the respondents require an incineratier operator and
it cannot be that the hospital does not need the
operation of the incinerator after every 89 days.
Thus subject to the availability of the work there is
no requirement to give a technical break of 89 days.

6. The applicant has not sought any relief
by way of grant of temporay status probably because
the Scheme is applicable only to Grade 'D' posts. If
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the applicant had acquired temporary status under the relevant scheme, the problem regarding technical break would not have arisen.

7. In conclusion, the O.A. is disposed off with the direction that respondents will so long as work is available and the applicant is continued on daily wages, they will not insist on the technical breaks after every 89 days. This will however give no right to the applicant in respect of his claim for regularisation.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

Mittal