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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 440 of 1995

New Delhi, this the 28th day of September, 1998

HON'BLE MR. T. N. BHAT, MEMBER (J)
HON'BLE MR. S. P. BISWAS, MEMBER (A)

1. Sh. Ashok Kumar Misra,
S/O Late Sh. Kishori Misra
2. Sh. Nikko Kumar,
S/O Sh. Arjun Singh
3. Sh. Gaur Singh,
S/O Sh. Jhabar Singh
4. Sh. Raj Kumar,
S/O Kailash Chander

(All working as Enquiry Clerk in Parliament
Works Division - III, I.P. Bhavan, C.P.W.D.
New Delhi)
5. Mohd. Shahid,
S/O Late Sh. Jalauddin
6. Sh. Virender Kumar Aggarwal,
S/O Late Sh. B A Aggarwal
7. Sh. Karan Singh,
S/O Late Sh. Shiv Karan
8. Sh. Rajan Kumar,
S/O Sh. Tila Ram

(All working as Enquiry Clerk in Parliament
Works Division - I, Ferozeshah Road, C.P.W.D.
New Delhi.)
9. Sh. Abdul Manan,
S/O Mohd. Wahid Boxash Molla
(Working as Enquiry Clerk in B-Division, I.P.
Bhavan, C.P.W.D., New Delhi).
10. Sh. Govardhan Misra,
S/O Sh. Ram Sihashan Misra
(Working as Enquiry Clerk at B-Division C.P.W.D.
Kushak Road, New Delhi).
11. Sh. Rajendra Prasad Ojha,
S/O Sh. Damodar Ojha
(Working as Clerk at Asian Games Electrical
Division-I, C.P.W.D., Jawaharlal Nehru Stadium,
New Delhi).

-- APPLICANTS.

(By Advocate: Sh. S M Garg)

Versus

1. Central Public Works Department, through its Director General (Works), Nirman Bhavan, New Delhi-1.
2. The Executive Engineer, Parliament Works Division No. III, I.P. Bhavan, C.P.W.D., New Delhi.
3. The Executive Engineer, Parliament Works Division-I, C.P.W.D., New Delhi - 1.
4. The Executive Engineer, B-Division, C.P.W.D., I.P. Bhavan, New Delhi.
5. The Executive Engineer, Asian Games Electrical Division-I, C.P.W.D., Jawahar Lal Nehru Stadium, New Delhi.

RESPONDENTS

(By Advocate -Sh. V K Mehta)

O R D E R

By Mr. S.P. Biswas, Member (A):

Heard the rival contentions of the counsel for both the parties. The issues that fall for determination in this OA, are as under:-

- i) Whether the employee/employees appointed officially in a lower category but performing duties of higher posts continuously over a long period of time can claim payment of salary and allowances pertaining to the higher posts?
- ii) Whether the employees having thus continued working in higher posts over 8 to 10 years, can legally claim for regularisation against the posts they have been actually working?

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2. The applicants, eleven in number, entered into the services under the respondents as Beldars/Chowkidars on different dates as shown against the name of each in the OA. Right from the initial date on which they entered into the service between 1975-83, the applicants have been discharging the duties of Clerks/Enquiry Clerks till February, 1995 when this application was filed. The relevant details regarding the places of their posting, initial date of engagement, nature of duties performed and the documents where they have been actually working as Clerks/Enquiry Clerks, are available in the OA. The duties of a Beldar, as stipulated in para 3 of C.P.W.D. Manual, are as under:-

""Miscellaneous unskilled jobs such as (i) earth work (ii) carriage of materials and artisan in their work. The employment of this category should be confined to works relating to constructions and maintenance of buildings and roads."

3. As against duties prescribed above, the applicants have been performing the duties of Clerk i.e. typing, making entry in the diaries, despatches of the communications, preparing abstracts, writing complaints made by allottee, issuing materials, keeping records of the materials received, materials issued to V.I.P. accommodations and all other miscellaneous jobs pertaining to those assigned to regular office

Clerks/Enquiry Clerks. The fact that the applicants do posses qualifications for performing the duties of Clerks/Enquiry Clerks are not disputed by either of the parties.

4. As against the above position, as contended by the learned counsel for the applicants, the respondents would submit that the applicants were discharging the duties of Clerks only voluntarily. It has been submitted that the applicants themselves used to volunteer their services so as to get an experience of the job for their own future prospects. The applicants, who were regular Beldar/Chowkidar/Khaliasi, have basically to perform hard manual work. They themselves of their own used to volunteer for jobs of Enquiry Clerks/ assisting JC in writing/ furnishing records etc. The respondents further submitted that they have not used any colourable exercise of powers to enforce the applicants to perform duties of Clerks/Enquiry Clerks.

5. Since there was a controversy with respect to the utilisation of the services of the applicants, this Tribunal ordered appointment of a Learned Advocate of this Tribunal to act as a Commissioner in the matter, inspect the records as listed in the OA and submit a report indicating whether the applicants have been performing the duties of Clerks/Enquiry Clerks during the period as shown in the chart, annexed with the OA. The Commissioner, in his report dated 31.10.96, has recorded his views as under:

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"In the conclusion it is seen that all the applicants in the Original Application 440/95 have worked as enquiry clerks or despatch clerks or typists or furniture clerks during the period for which documents were seen by me as listed in my report (Annexuree E to F). All the applicants are stated to have been withdrawn from clerical works from Jan 1995 after filing the present OA by them."

6. The report further mentions utilisation of the services of the applicants as Clerks/Enquiry Clerks as mentioned below against the name of each individual applicant.

"a) FEROZE SHAH ROAD, ENQUIRY OFFICE, NEW DELHI UNDER EXECUTIVE ENGINEER PARLIAMENT WORKS DIVISION NO. I.

Name of the applicants	Period for which worked as Enquiry Clerks.
1. Sh. Modh. Shahid (Applicant No. 5)	Sept. 1983 to June 1994
2. Sh. V K Aggarwal (Applicant No. 6)	July 1981 to June 1994
3. Sh. Karan Kumar/Singh (Applicant No. 7)	August 1985 to Sep.1994
4. Sh. Rajan Kumar (Applicant No. 8)	April 1981 to June 1994

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b) ENQUIRY CLERKS AT CPWD ENQUIRY, NORTH AVENUE, NEW DELHI, PARLIAMENT DIVISION NO. III.

Name of the Beldars/Chowkidars	Period for which worked as Enquiry Clerks.
1. Sh. Ashok Kumar Mishra (Applicant No. 1) Chowkidar	1981 to 1994
2. Sh. Gaur Singh (Applicant No. 3) Baildar	1981 to 1994
3. Sh. Raj Kumar (Applicant No. 4) Baildar	1977 to 1994
4. Sh. Nikko Kumar (Applicant No. 2) Chowkidar"	1980 to 1994

7. Respondents have not disputed correctness of the aforesaid details.

8. The question, therefore, is whether the applicants are entitled for pay and allowances for working in the higher post as well as regularisation.

9. To add strength in support of his contentions, Sh. S M Garg, learned counsel for the applicants drew our attention to the judgments of Hon'ble Supreme Court in the cases of **DHIRENDRA CHAMOLI AND ANOTHER VS. STATE OF U.P.**, (1986) I S.C.C. 637 and in the cases of **DAILY RATED CASUAL LABOUR VS. UNION OF INDIA** and **NATIONAL FEDERATION OF P & T EMPLOYEES AND ANOTHER VS. UNION OF INDIA & ANOTHER**, (1988) 1 S.C.C. 122.

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10. In the former case (Chamoli) casual workers on daily wage basis having performed the duties of regular Class IV employees were held entitled to salary and conditions of service at par with the regular employees. But because of lack of sanctioned posts, the claim for regularisation could not be entertained. However, the practice of employing casual workers for over a decade for carrying out jobs which are not due to them has been deplored.

11. In other case (namly, Daily Rated Casual Labour), the respondents were directed to absorb the casual labourer continuously working against regular posts in the department after formulating a rational scheme.

12. The law is well settled now in respect of payment of salary and other allowances for having worked in higher posts. The applicants are entitled to claim the salary and allowances applicable to the posts of Clerks/Enquiry Clerks for the periods they have been working in terms of the law laid down by the Hon'ble Supreme Court in the case of **SELVARAJ VS. LT. GOVERNOR OF ISLAND PORT BLAIR AND OTHERS**, JT 1998 (4) SC 500. In this case, it was held that on principle of quantum meruit, the appellant should have been paid salary in the higher scale of that post during the time he actually worked in that capacity. A similar view was taken by the Apex Court in the case of **SECRETARY-CUM-CHIEF ENGINEER, CHANDIGARH VS. HARI OM SHARMA & OTHERS**, 1998 (5) SCC 87. The question also came up for consideration before this Tribunal in OA 2355/98 decided on 30.5.1995 wherein this Tribunal held that "if a person is made to work in a

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higher position and working as such for a number of years, then he is entitled to the pay and allowances of that post".

13. Similarly placed three employees who had actually discharged the duties of Clerks/Enquiry Clerks but designated as and paid salary of Beldar approached this Tribunal in OAs 3183/89 and 712/91. In its order dated 5.5.1993, the Tribunal passed the following directions:-

"We direct the respondents to consider the case of the Petitioner for regularisation in the higher grade viz. Clerk/Enquiry Clerk on the footing that he has rendered 240 days service each in two consecutive years. Respondents are also directed to pass necessary orders within a period of three months from the date of receipt of this order.

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We are not inclined to accept the arguments of Sh. M L Verma that since the Petitioners were not asked to work on the post of Clerk/Enquiry Clerk they are not eligible for regularisation. The Commissioner's report clearly indicate that the petitioners rendered service as Clerk and the Respondents took work from them as clerk."

14. The Tribunal, in the aforesaid cases, gave orders for regularisation on the strength of Annexure A / Circular dated 4.7.88 issued by the respondents. The stipulations in that circular permit regularisation in higher category even if the workers were engaged

initially in lower category for some time subject to the conditions mentioned therein. The relevant portion is reproduced below:-

"Those Muster Roll workers who have rendered 240 days service each in two consecutive years in a higher category may be regularised in the Higher category even if they have worked in the lower category for some time subject to the condition that the services rendered in the lower category would not be consider for the purpose of seniority or for any other purpose and further subject to the condition that an option should be taken from the concerned Muster Roll Worker at the time of his absorption in the lower/higher category of work charge establishment and such of those opt for absorption of the lower category may be allowed to do so."

15. Being aggrieved by this Tribunal's aforesaid orders dated 5.5.93, the respondents, Govt. of India, took up the matter to the Hon'ble Supreme Court by SLP No. 991/94 which was dismissed in favour of the respondents therein (i.e. the applicants in the Original Application) vide order dated 29.7.1994.

16. It is, thus, evident that the objections raised by the respondents were rejected and over-ruled by the Hon'ble Supreme Court in view of the fact that the applicants have been discharging the duties of Clerks for about 8 to 15 years. The same situation prevails here.

17. It is well settled in law that the regularisation can only take place pursuant to a scheme or order and against regular vacancies and that too in terms of fulfilment of the recruitment rules. If any authority is required for the purpose, it is available in **MUKESH BHAI CHOTTABHAI PATEL VS. JOINT AGRICULTURAL & MARKETING ADVISOR, GOVT. OF INDIA & OTHERS, AIR 1995 SC 413.** Merely working on a post for a number of years on adhoc basis will not vest a person with a right to get regularised on a post which is meant to be filled up by regular recruitment under statutory rules. We are bound by the aforementioned orders of the Apex Court.

18. In view of the aforementioned detailed discussions, the OA succeeds on merits and is accordingly allowed with the following directions:-

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- a) The respondents are directed to pay salary and other allowances payable to regular Clerks/ Enquiry Clerks to the applicants for the period they have shouldered the responsibilities of the higher post. This shall be done within a period of six months from the date of receipt of a certified copy of this order.
- b) The respondents shall also consider regularising the services of the applicants as Clerks /Enquiry Clerk against the vacancies available but strictly in terms of the seniority and fulfilment of other conditions for such promotion. Though, the employees like Beldars and Chowkidars would have their normal promotion as Plumbers and Masons in normal channel, they have acquired vested rights for consideration of regularisation as Clerk because of working in that capacity over a decade.
- c) There shall be no order as to costs.

S. P. Biswas
(S. P. BISWAS)
MEMBER (A)

T. N. Bhat
(T N BHAT)
MEMBER (J)

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