

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.431/1996

New Delhi this the 1st day of March, 2000.

(26)

1. Sh. M. Chandrasekharan,
S/o Sh. K.P. Nair,
working as Enquiry Clerk,
'C' Division, Sub-Division, 3/C,
CPWD , Shram Shakti Bhavan,
New Delhi.
2. Sh. Vinod Ram,
S/o late Shri Badri Nath,
working as Enquiry Clerk in 'C'
Division, CPWD and posted at
Yojna Bhawan, New Delhi.Applicants

(By Advocate Shri S.M. Garg - not present)

-Versus-

1. Central Public Works Department,
through its Director General (Works),
Nirman Bhawan,
New Delhi.
2. The Executive Engineer,
'C' Division, I.P. Bhawan,
New Delhi.Respondents

(By Advocate Shri R.V. Sinha - not present)

ORDER(oral)

By Reddy, J. -

None appears for the applicants.
Departmental representative Shri Prithvi Singh,
Head Clerk is present on behalf of the
respondents. Since the matter is of 1996, we
have proceeded to dispose of the same on merits.

2. It is the case of the applicants that
though they have been working as Enquiry
Clerk/Clerk in CPWD for several years they have
been paid the salaries of Beldars. As per
Annexure A-1 it is seen that both the applicants
have been designated as Beldars and applicant no.1



has been working from 1979 with intermittent breaks and applicant no.2 has been working from 1980 with intermittent breaks up to filing of the OA. It is their case that as they were asked to discharge the duties of Enquiry Clerks they have been working as such. They were however paid the wages of Beldars. The applicants, therefore, claim that they are entitled for being regularised in the post of Enquiry Clerks.

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3. The respondents state that the applicants were actually employed as Beldars and the allegation that they have been working as Enquiry Clerks is denied. It is stated that the posts of Clerks in CPWD are governed by the Central Secretariat Clerical Service cadre and all Clerks in this service are filled as per the Service Rules through an examination held by the Staff Selection Commission. The applicants have been recruited as Beldars and hence they are not entitled for regularisation as clerks.

4. We have perused the pleadings carefully.

5. It is not disputed that the applicants have been appointed as Beldars in CPWD. The claim of the applicants mainly depends upon their assertion that they have been discharging the functions of Enquiry Clerks. This assertion is however flatly denied by the respondents. We do not find any material on record in support of the plea of the applicants.

OMA

The applicants seek that a Commissioner be appointed to go into the records of the CPWD and ascertain whether they had been discharging the functions of the clerks. They also rely upon certain judgments of the Tribunal where, in the past, such directions have been passed. We do not find it necessary to appoint a Commissioner in this case. Even if the assertion that the applicants have been working as Clerks, is ultimately found true, are they entitled to be regularised as Clerks? It is the case of the respondents that the posts of Enquiry Clerks are governed by the Central Secretariat Clerical Service Rules and the selection to the posts in this service are made ^{and} ~~fixed~~ as per the said rules through an examination held by the Staff Selection Commission. Unless the applicants participate in such examination and are recruited in accordance with the above rules, they cannot seek regularisation in the posts of Clerks. Mere working in the post of Clerks is not enough to acquire eligibility for the purpose of being regularised in the post of Clerks. The applicants, if at all are entitled to, may be entitled for the additional wages during the period when they have discharged duties in the post of Clerks, which of course is not the claim of the applicants in this OA. They should have approached the Tribunal within the period of limitation and made out a case for claiming such relief.

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6. The applicants rely upon the judgement in Ram Nath Singh v. Union of India, OA.712/91 decided on 5.5.93 by the Principal Bench of the Tribunal where the Tribunal has given a direction to the respondents to consider the cases of the applicants therein for regularisation in the post of Clerks on the ground that they had rendered 240 days service each in two consecutive years. In the above case also the applicants were Beldars. But it is seen from the judgement, ~~of the~~ the Tribunal has not kept in view of 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 v. 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 rules. The same ratio applies to any post where the post is governed by the recruitment rules.

7. The OA, therefore, fails and is accordingly dismissed. No order as to costs.

Shanta Shastray

(Smt. Shanta Shastray)
Member(A)

Rajagopala Reddy

(V.Rajagopala Reddy)
Vice-Chairman(J)