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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1783/1997

New Delhi, this 8th day of November, 2000

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

Yunus Ali
G-30A/A, Abul Fazal Enclave
Jamia Nagar, Okhla, New Delhi .. Applicant

(By Shri K.K. Patel, Advocate)

versus

1. Director General (Works)
CPWD, Nirman Bhavan, New Delhi
2. Superintending Engineer
Delhi Central Circle
VIII, CPWD, R.K. Puram, New Delhi
3. Executive Engineer
IV-P Sub-Division, CPWD
S-III/299, Sadiq Nagar, New Delhi.. Respondents


(By Mrs. P.Gupta, Advocate)

ORDER

By Shri M.P. Singh

By the present OA, the applicant seeks directions to the respondents to regularise his services as Enquiry Clerk in CPWD and to pay him salary of that post instead that of Beldar w.e.f. 23.12.83.

2. Briefly stated, the applicant claims to have been appointed as Beldar w.e.f. 23.12.83 and since then he is working as Enquiry Clerk in CPWD. He appeared for the post of Enquiry Clerk on 15.7.91 but he has not been regularised in that post. In support of his prayer, the applicant has relied upon the decisions dated 30.5.91 in OA 2355/88, 5.5.93 in OA No.712/91 and OA No.2183/89. All these judgements have been upheld by the Hon'ble Supreme Court by its decision dated 28.7.94 in SLP No.991/94. He has also cited the judgements of the apex court in the cases of D.Chamoli Vs. State of UP 1986(1)



SCC 637, Daily Rated Casual Labour etc. Mazdoor Sangh Vs. UOI 1988(1) SCC 172 and Bhagwan Dass Vs. State of Haryana ATJ 1987(2) 479.

3. Respondents in their counter have opposed the claim. It is their case that the applicant joined as muster roll Beldar in Asian Games Civil Division of CPWD as Beldar on 23.12.83, regularised on 20.2.93 and confirmed as such on 20.2.94. He was transferred to Srinivasपुरi Enquiry Office on 15.10.96 where he is still working. Respondents contend that the decisions of this Tribunal cited by the applicants are not applicable to his case as the applicant has been performing the duties of Beldar from the date he joined service and not as Enquiry Clerk. Also he was never ordered to perform the duties of Enquiry Clerk. Recruitment to the clerical cadre in CPWD is done through competitive examination as per the R/Rules from Group D staff like Peon/Daftry and not Beldar. Though the applicant appeared in the interview for the post of Enquiry Clerk on 15.7.91 he had failed to qualify the same. Therefore the applicant has no case and the OA deserves to be dismissed, they would contend.

4. Heard the rival contentions of the contesting parties and perused the records.

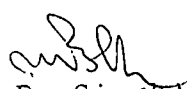
5. Learned counsel for the applicant vehemently argued that the applicant is still functioning as Enquiry Clerk and has acquired a claim to be regularised in that post. He has cited the judgement of the apex court in the case of Narender Chandra Vs. UOI (1986) 2 SCC 157 wherein it has been held that "where persons have been allowed to

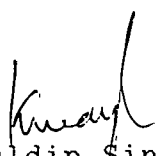


function on higher posts for a number of years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such post".

6. Learned counsel for the respondents on the other hand maintains that the applicant was never asked to perform the duties of Enquiry Clerk and therefore the judgement of apex court is not applicable to his case. He has also placed reliance on the decision of the coordinate Bench of this Tribunal dated 1.3.2000 by which OA No.431/1996 involving identical issue was dismissed, for the detailed discussions made therein. We are convinced that the applicant's case is fully covered by the decision dated 1.3.2000 (supra) and we have no reason to take a different view. That apart, the applicant has not produced any order or communication to show that he was asked to perform the duties of Enquiry Clerk at any stage. To the contrary, we find a communication dated 27.8.97 from the CPWD addressed to the Executive Engineer, Sadiq Nagar to the effect that CPWD do not possess any record to prove that the applicant has worked as Enquiry Clerk and that he had worked only as a Beldar and not in any other post/position. That apart, we find from R/Rules placed before us that the post of Beldar is not a feeder post for promotion to clerical posts.

7. In view of the above position, we do not find any merit in the present OA and the same is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)