

20

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2799 of 1997 decided on 24.5.1999

Name of Applicant : Mahipal

By Advocate : Shri S.K.Gupta

Versus


Name of respondent/s Union of India & others

By Advocate : Shri N.K.Aggarwal

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No


(N. Sahu)
Member (Admnv)

24/5/99

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

21

Original Application No.2799 of 1997

New Delhi, this the 24th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Mahipal S/o Shri Girish Chander Sharma,
R/o K-99, Adarsh Mohalla, Krishna Gali
No.8, Maujpur, Delhi-110053

- APPLICANT

(By Advocate Shri S.K.Gupta)

Versus

Union of India, through

1. Secretary, Ministry of Urban
Development, Nirman Bhawan, New Delhi.

2. Executive Engineer(Electrical), Air
Conditioned Division No.3, C.P.W.D.,
New Delhi (Vidyut Bhawan).

3. Superintending Engineer (Electrical),
Room No. 401-A, 4th Floor,
I.P.Bhawan, C.P.W.D., New Delhi.

- RESPONDENTS

(By Advocate Shri N.K.Aggarwal)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The prayer in this Original application is to quash the letter dated 21.1.1997 and also for a direction to the respondents for considering the applicant's case as a regular serviceman on the basis of the result of the trade test held by the respondents as well as the subsequent interview by a letter dated 22.3.1993.

2. The background facts of this case are admitted and they are to be found in a letter No. 10(56)/CAT CASE/98/CO-ord. Circle (E)/E-6/54 dated 21.1.1998 addressed by the Superintending Engineer (E) Coordination Circle (Elect), CPWD, IP Bhawan, New Delhi, who is respondent no.3 to the Director General

:: 2 ::

(Works), (EC-X Section), CPWD, Nirman Bhawan, New Delhi. The facts stated in the letter are unambiguous authentic and exhaustive. The letter dated 21.1.1998 deserves to be quoted in extenso -

"Sub: Regularisation of services of Sh. Mahipal, presently working as Muster Roll Serviceman in Air Conditioning Divn.III.

Executive Engineer (E), Air Conditioning Divn.III, CPWD, New Delhi engaged Sh. Mahipal as M/R Khallasi w.e.f. 10.3.83 and from 4.12.85 onwards he was engaged as M/R Serviceman (AC&R) and is working as Serviceman till date. Sh. Mahipal has qualified the trade test held on 3.2.93 and found fit by the D.P.C. for regularisation to the post of Serviceman.

However services of Sh. Mahipal could not be regularised in the grade of Serviceman (AC&R) due to the ban on direct recruitment since Sh. Mahipal was engaged as M/R Serviceman (AC&R) w.e.f. 4.12.85 only i.e. after the ban date of 19.11.85 though he was working as Khallasi since 10.3.83 on M/R. Sh. Mahipal was offered the option for regularisation to the post of Khallasi as he was engaged as M/R Khallasi w.e.f. 10.3.83 i.e. prior to the ban date, which the worker refused. Sh. Mahipal has now appealed in the C.A.T., New Delhi for regularisation to the post of Serviceman (AC&R) and date of hearing is fixed for 28.1.97 (O.A. No.2799/97 in the matter of Sh. Mahipal Vs. U.O.I.).

In this context attention is invited to your office letter No.38/2/85-ECX dt. 4.7.88 (copy enclosed) vide which instructions regarding absorption of M/R workers on the W.C. Estt have been circulated. In view of instruction contained in your above letter dt. 4.6.88 it may kindly be clarified whether services of Sh. Mahipal can be regularised to the post of Serviceman (AC&R) or not. In this connection it is also mentioned that the post of Serviceman (AC&R) has since been merged with that of Mechanic (AC&R) and appointment/promotions to the post of Serviceman have been kept in abeyance as per instructions issued by your office vide O.M.No. 22/9/93- EC.X (Vol.VI) dt. 26.6.97."

:: 3 ::

3. The applicant's claim is that he was appointed as a Serviceman as no other candidate was available, after his name was sponsored by the Employment Exchange. Secondly, the applicant appeared and was declared successful in the trade test. He was also cleared in the interview by respondent no.3. He is working since 1983 and he worked on the post of Muster Roll Khallasi for more than 240 days from 1983 up to 1985 in each year and thereafter also he has worked for more than 240 days from 1986 up to 1997 in each year. The reason for not regularizing him was the imposition of a ban dated 19.11.1985 and it was stated that the applicant was appointed on the post of Serviceman with effect from 4.12.1985.

4. The respondents have made very clear in the counter that regularization of the applicant's services as a Serviceman is not possible because by an order dated 7.5.1997 Serviceman category was merged in the Mechanic category. As per the recruitment rules of Mechanic, a candidate who possesses a trade certificate from a recognized vocational training institute and who possesses three years practical experience in a workshop dealing with operation and maintenance of mechanical plants, is eligible for consideration. As against this, in his rejoinder the applicant stated as under -

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"Still the applicant is working as Serviceman and the merger of serviceman and Mechanic (AC&R) as he is fully eligible for consideration in terms of Recruitment Rules of Mechanic (AC&R) as he is possessing the requisite qualification of Diploma in Mechanic (Composite) of two years from I.T.I.

:: 4 ::

Bulland Shahar and having the experience in Workshop for dealing with operation and maintenance of Mechanical Plants. Since 1985 the applicant is performing the duties -

(i) for attending for major repairs on Refrigerator, Coolers, A.C. and Cold Storage plants etc.

(ii) Rectifying faults in small compressors pumps of all sizes, motors control switch gear and Refrigeration Control.

(iii) Carrying the Lubrication of motors, testing of leaks and gas and oiled charging.

(iv) joining the Refrigeration fitting and piping with Soft Solders and working as operator on large sized A.C. and Cold Storage Plant.

Apart from above applicant is having experience of repairing and fitting of A.C. and cold storage in respondent's office itself"

5. It appears to me that after engaging the applicant for 14 years as a Serviceman and taking his services and thereafter denying him the benefits of regularization is contrary to the principles laid down by the Hon'ble Supreme Court's Constitution Bench in the case of There is no State of Haryana & ors. Vs. Piara Singh and ors., JT 1992(5) S.C. 179. There is no endeavor or anxiety on the part of the respondents to view the case of the applicant with the sympathy he deserves. If after 15 years of service as Serviceman/ Mechanic if he is asked to give his consent for regularization as Khallasi it is a most negative way of rewarding working personnel in the organization. The Constitution Bench in Piara Singh's case(supra) has laid down as follows -

"If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to rules and his

25


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service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person."

6. Keeping the above principles laid down by the Hon'ble Supreme Court I direct that respondent no.1 Secretary, Ministry of Urban Development shall appoint a Committee of Experts to be nominated by him to assess as to whether the applicant fulfils the qualification as laid down in the Recruitment Rules for the post of Mechanic. If he does satisfy and if his performance and records are up to the bench mark, he shall be considered for the post of Mechanic and the recommendations of the committee appointed for this purpose by respondent no.1 shall be final.

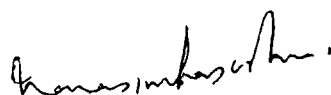
 7. If the committee considers his qualification to be not in accordance with or up to the qualifications prescribed, then he may be considered

26

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for the post of a Serviceman by creating a temporary supernumerary post for this purpose and he be given two years' time to make himself eligible - both qualificationwise and experiencewise for the Mechanic's post. It is made clear, however, that he shall compete for the Mechanic's post in the normal course along with others, if the Committee considers him unsuitable now.

8. The OA is disposed of as above. No costs.


(N. Sahu)
Member (Admnv)

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