

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1338/2000

New Delhi this the 14th day of December, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri V.S. Rawat,
E-32, Pocket 3, Mayur Vihar-I,
Delhi-110091 Applicant
(By Advocate : Shri G.K. Aggarwal)

VERSUS

1. Union of India through
Secretary Ministry of Urban
Development, Nirman Bhawan,
New Delhi : 110 011
2. The Director General (Works)
Central Public Works Department
Nirman Bhawan,
New Delhi - 11
3. The Superintending Engr,
Co-ordination Circle (Electrical)
CPWD, A-401, IP Bhawan,
IP Estate, New Delhi-2 Respondents
(By Advocate : Sh. D.S. Mahendru)

O R D E R (ORAL)

Shri S.A.T. Rizvi, Member (A) :

The applicant in this OA was appointed as hand-receipt ML-Driver (MLD) in the CPWD on 27.12.1988 and has been continuing as such uninterruptedly to date. He was appointed at Manesar in Haryana from where he was transferred to Delhi on 31.11.1991 and thereafter to another location in Delhi on 12.12.1995. He is working in Delhi as on date. The applicant's grievance is that all those, like him, who were appointed as MLDs upto 31.12.1988 were regularised and confirmed. He contends that even those appointed in 1989 were, in some cases, regularised/confirmed. Their regularisation/confirmation was on the basis of the length of service performed as hand-receipt MLDs. The applicant is aggrieved by the respondents' action

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in not considering his claim for regularisation/confirmation considering that several others have already been confirmed/regularised which include some, who are obviously junior to him. Hence this OA.

2. The learned counsel for the applicant has given several names of those hand-receipt MLDs who have been regularised/confirmed while ignoring the claim of the applicant. He has given certain names like those of Shri Kishan Singh and Shri Sri Pal, who were appointed in 1989 and on 31.12.1988 respectively and has stated that their services have been regularised/confirmed. A third name given by him is that of Shri Mool Chand, who was appointed as hand-receipt MLD in 1991. According to him, the regularised/confirmed hand receipt MLDs are obviously placed in a much better position financially and otherwise in service matters compared to the hand-receipt MLD and on this ground he contends that the claim of the applicant should be considered and decided expeditiously. He has invoked the principle of equal pay for equal work and has, in this context, contended that the applicant is similarly placed to the others named above who have since been confirmed/regularised.

3. The learned counsel for the respondents has referred to a certain ban on the creation of posts imposed by the order dated 19.11.1985 placed on record. He has also referred to a decision of this Tribunal in OA No. 1391/1999, which deals with a

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similar case. After considering the claim of the applicant in that case, this Tribunal had held as follows:

"Para-5 - Heard the learned counsel for the applicant and the respondents. A reading of the OM dated 10.9.93 make it manifest that it is applicable only to the Group 'D' employee for the grant of temporary status. The applicant, admittedly, is working as a Driver, which is a Group 'C' post. Hence, the applicant is not entitled for grant of temporary status. Since the applicant was engaged after the imposition of the ban on engagement of casual labourers and the Government has not taken any decision to regularise such workers the applicant cannot get any relief immediately. The respondents are, however, directed to consider the case of the applicant for regularisation, as he has been working for more than 10 years, in the post of Motor Lorry Driver, after the ban is lifted".

4. In the aforesaid order, the Tribunal has directed the respondents to consider the case of the applicant in that case for regularisation in the post of MLD after the aforesaid ban is lifted. The learned counsel has also contended that the hand-receipt MLDs who have been regularised/confirmed belong to the SC/ST community and the OBC category, who had to be regularised/confirmed against the back log of vacancies to be filled by the said categories.

5. Insofar as the ban order of 19.11.1985 is concerned, we would like to observe that if the applicant or for that matter any other person is appointed in defiance of the said ban, it cannot mean any harm to the appointee, who must be granted his right in terms of the law in force. It is for the departmental authorities to find out as to why this ban has been observed in breach and if so by whom. The applicant cannot be treated differently just

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because he was appointed in contravention of the ban orders even though the appointing authority was competent to appoint him. As regards the order of this Tribunal in OA 1391/1999, we find that the same ~~can~~ can be distinguished inasmuch as the contention raised before the Tribunal in that case, was that a ban had been imposed on regularisation and, therefore, impliedly the ban would not appear to have been imposed on the creation of posts. In this view of the matter we are free to take a different view in the present case than was taken by this Tribunal in the aforesaid OA.

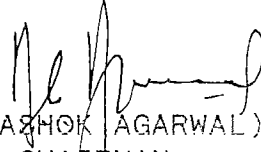
6. The learned counsel for the respondents has not produced before us any documents to show that as contended by him all those regularised/confirmed as aforestated were so regularised/confirmed by way of filling up of back-log of vacancies in respect of SC, ST and OBC categories. He has further not been able to show to us any record, which will rebut the contention of the learned counsel for the applicant that persons like Kishan Singh appointed in 1989, Sri Pal appointed on 31.12.1988 and Mool Chand appointed in 1991 belong to the said categories. We have, therefore, to accept what the learned counsel for the applicant has to say that quite a few persons junior to the applicant have been regularised/confirmed and he has been left out. ~

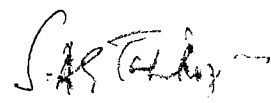
7. In the background of the above discussions, we are convinced that the applicant deserves to be treated in the same way in which the aforesaid juniors to him have been treated. Accordingly, the applicant

[Signature]

deserves to be regularised/confirmed from November, 1995 with all consequential benefits which will include back-wages with effect from the date of regularisation. This will be done expeditiously and in any event in a period of three months from the date of receipt of a copy of this order. We order accordingly.

8. The OA is disposed of in the aforesaid terms without any order as to costs.


(ASHOK AGARWAL)
CHAIRMAN


(S.A.T. RIZVI)
MEMBER (A)

(pkr)