

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1890/2000

New Delhi, this the 16th day of the February, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

M.C. Sheela
D/o M.C. Dass
R/o 90 E, Type B
Aram Bagh,
Pahargang, New Delhi.

.. Applicant

(By Advocates: Shri Naresh Kaushik)

V E R S U S

Union of India, through the

1. Secretary
Ministry of Urban Affairs and Development
Nirman Bhawan,
New Delhi-110055.

2. The Director General of Works,
CPWD,
Nirman Bhawan,
New Delhi-11.

3. Executive Engineer
"E" Division
CPWD, Jalebi Chowk, Sourth Block,
New Delhi.

... Respondents

(By Advocate: ~Shri D.S. Mehand)

ORDER (ORAL)

By SHRI S.A.T. RIZVI MEMBER (A):

Heard the counsel.

2. The applicant in this OA has been working as Beldar on Muster Roll basis w.e.f. 30.6.1986. She is not a regular Beldar and is being paid as Muster Roll Beldar. Notwithstanding the aforesaid position, the respondents have been utilising her services as a Clerk-Cum-Typist right from 25.7.1986 with some breaks. Several certificates have been placed on record to show that she has been working as such from 25.7.1986 to 30.10.1994, from

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27.10.1994 to 23.11.1995 and, thereafter, again from 16.2.1996 to 22.1.1999. According to the learned counsel for the applicant, the aforesaid certificates merely serve as an illustration and have been produced to lend support to the applicant's claim. The fact, according to the learned counsel, is that the applicant has been working as de-facto Clerk-Cum-Typist from day one from 30.6.1986 without any break.

3. On the strength of the aforesaid service rendered by the applicant, she has asked for a two-fold relief. Firstly, she wants to be regularised as LDC in which capacity she has been working on a de-facto basis and for which she is properly and adequately qualified. Secondly, she wants to be paid arrears of payments due to her for working as a Clerk-Cum-Typist all these years.

4. In support of her claim, the learned counsel has placed reliance on Selvaraj Vs. Lt. Governor of Island, Port Blair and others reported as (1998) 4 SCC 291. Paragraph 3 of the aforesaid order which is relevant in the present situation is reproduced below:-

"It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy

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Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs.1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground."

I find myself in agreement with the principle recognised in the aforesaid judgement of the Hon'ble Supreme Court which in my view covers the present case as well inasmuch as the facts and circumstances in the two cases are similar.

5. In regard to the claim for regularisation, the learned counsel appearing for the respondents has maintained that the applicant who is still a Muster Roll Beldar, will, in accordance with the relevant rules, first need to be made a regular Beldar and, thereafter, promoted as mate before she becomes ^{as} a Clerk in the respondents' set up. According to him, the fact that she is educationally qualified to hold

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deserves to be rejected. Needless to say that the applicant being educationally qualified and also holding necessary experience will be entitled to be considered for appointment as a regular Clerk-Cum-Typist as and when a regular vacancy arises in that rank, but this will be possible only in accordance with the procedure laid down and through the Staff Selection Commission. The respondents will facilitate her appointment on a regular post by granting her age relaxation as appropriate when she decides to apply for a regular job.

6. In the circumstances, the OA is partly allowed and is disposed of by directing the respondents to consider the claim for payments of arrears due to the applicant on account of her working as a Clerk-Cum-Typist for whatever period she may have actually worked as such during the period ~~from 27~~ ²⁷ 30.6.1986 onward. For this purpose, the applicant will file a representation before the respondents within 10 days from the date of this order. The respondents will dispose of her representation so filed within a maximum period of three months. It is clarified that the payment to be made will take into account the payment already made to the applicant as a Muster Roll Beldar.

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7. I would like to take note of the fact that the respondents have already conceded in their reply that the applicant will be considered for a regular

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the post of Clerk will not assist her in view of the fact that appointment as Clerk on a regular post can be made only through the Staff Selection Commission and in accordance with the applicable procedure and the relevant Recruitment Rules. In support of his contention, the learned counsel has relied on Shri M. Chandrasakharan and another vs. Central Public Works Department and another decided by this Tribunal on 1.3.2000 in OA NO.431/1996. The portion of the aforesaid judgement relevant for our purpose is reproduced below:-

"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.

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."

The learned counsel appearing for the applicant has nothing better to place before me insofar as the claim for regularisation is concerned. I am in agreement with the learned counsel for the respondents that the claim of the applicant for regularisation as Clerk-Cum-Typist lacks merit and

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Beldar's job as and when a vacancy in that rank
arises and action in this regard will be ^{taken} in
accordance with the CPWD Manual. No costs.

S.A.T. RIZVI

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

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