

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

- ✓ 1. OA No.2091/2000
2. OA No.2092/2000

New Delhi this the 16th day of May, 2002..

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.2091/2000

1. Parveen Kumar,
S/o Sh. Jasbir Singh,
R/o House No.61,
Village Malsawa,
Delhi-110033.
2. Ram Balak Thakur,
Sh. Rajeshwar Thakur,
R/o 287-A, Munirka Village,
New Delhi.
3. Paramatma Prasad Shukla,
S/o Sh. Devi Prasad Shukla,
R/o C-270, Prem Nagar, Najafgarh,
New Delhi-110043. -Applicants

(By Advocate Shri A.K. Behera)

-Versus-

1. Union of India through the
Secretary, Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011 -Respondents

(By Advocate - Shri Rajeev Bansal)

OA No.2092/2000

1. Shashi Bhushan Roy,
S/o Shri Bishwanath Roy
2. Mahesh Kumar,
S/o Shri Sadhu Ram
3. Sanjeev Kumar Pawar,
S/o Shri Ranveer Singh Pawar
4. Arvind Kumar Shukla,
S/o Shri Devi Prasad Shukla
5. Chun Chun Thakur,
S/o Shri Rajeshwar Thakur -Applicants

(By Advocate Shri A.K. Behera)

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New Delhi-110011

-Respondents

(By Advocate - Shri Rajeev Bansal)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

As these two OAs involve common question of law and fact, they are being disposed of by this common order.

2. It is not disputed that the applicants in OA-2092/2000 are Messengers working with the respondents after having accorded temporary status, except applicant No.4, viz. Arvind Kumar Shukla.

3. In OA-2091/2000 all the applicants are holding temporary status and are working on casual basis with the respondents as Drivers. It is also not disputed in both the OAs that the applicants have been working with the respondents for the last 8 to 14 years and they have availability of work with regard to the applicants.

4. Learned counsel for the applicants stated that the respondents have not yet regularised them against Group 'D' posts in accordance with the Scheme of DOPT of 1993, whereas in pursuance of the directions of this court in OA-9/99, one driver has been regularised. It is contended that the respondents by an advertisement notified 13 unreserved posts of Messengers and this clearly establishes that they have vacancies against which the applicants would be considered for regularisation, having worked from 8-14 years and are fully eligible as per the extant rules and instructions on the subject. The learned

counsel has placed reliance on the decision of the Apex Court in Gujarat Agricultural University v. R.L. Bachar & Ors., (2001) 3 SCC 574, wherein the following observations have been made:

"35. In the present case after absorption of employees under clause 1, we have already directed the State Government what they have to do in coordination with the appellant University to assess and find additional regular posts required by the University. In doing so, they shall keep in mind the continuous work which the workers are doing for a long number of years and after fixing the number it should further create such additional posts as necessary and absorb them. This exercise is to be undertaken, as aforesaid, within six months."

5. In this backdrop it is contended that in OA-2552/2000 - Jitender Pal v. Govt. of NCT of Delhi & Ors. decided on 14.12.2001, which pertains to the same department in which the applicants are working, a coordinate Bench of this Court placing reliance on the aforesaid decision of the Apex Court directed to consider regularisation of the applicants against the suitable group 'D' posts and in the event there is no vacancy the applicant may be considered for appointment on regular basis against the first available vacancy in any of the units of the respondents or by creating a post for him. Applicant further placed reliance on a decision of this court in OA-2733/99 - Shri Ranjit Singh & Anr. v. Union of India & Ors. decided on 15.12.2000 and stated that the same is on all fours with the case of the applicants and they are entitled for being considered and regularised against the group 'D' posts as per the DOP&T Scheme of 1993. In this manner it is stated that the respondents under the guise of ban on recruitment are depriving the

3 applicants of their legitimate right of regularisation, which entitle them to regular pay scale and seniority on the post.

6. On the other hand, respondents counsel denied the contentions and although the fact of continuance of the applicants for the last 8-14 years has not been disputed but yet it is stated that there is no sanctioned strength of Messengers with the answering respondents and the regularisation will take place after lifting of ban and availability of clear vacancies. It is stated that as far as advertisement issued by them for appointments of Messenger is concerned the same in view of the ban has not been acted upon and no appointment in pursuance thereof has been made. It is further stated that it does not lie within the jurisdiction of this Tribunal to direct the respondents to create vacancies, which is a policy decision and prerogative of the Govt. It is also contended that although applicants are continuing on account of the status quo order passed by this court but their further continuance is dependent on the availability of work. Further, it is fairly assured that as and when clear vacancies in Group 'D' are available with the respondents, applicants shall be considered in accordance with the rules and law on the subject.

7. I have carefully considered the rival contentions of the parties and perused the material on record. The resort of the applicants' counsel to the decision of the Apex Court in Gujarat Agricultural University's case (supra) to establish that if a casual worker has continued for long years he has a right to be considered for regularisation and in the event the vacancy

is not available the respondents may be directed to create additional posts or vacancies to accommodate him. This direction was also followed by a coordinate Bench of this Tribunal in Jitender Pal's case (supra). However, I do not agree with the same. Creation of vacancies is the prerogative of the Govt. and more particularly as there has been a ban by the Government regarding appointment the action of the respondents not to regularise the applicants and their decision to regularise them on availability of vacancies cannot be found fault with. Further, it cannot be lost sight of that the applicants have been continuing with the respondents for the last 8 to 14 years and most of them have already attained temporary status. Regularisation would bestow on applicants regular pay scale and all other benefits as admissible to a regular Govt. servant. Applicants have also become over aged and are not eligible to be considered for appointment to any other Group "D" posts. The Apex Court in Gujarat Agricultural University's case (supra) having regard to the grievance of the daily rated workers who despite being qualified for regularisation have not been considered and the fact that non-creation of posts itself created an unfair labour practice directed creation of posts to regularise the petitioners therein in accordance with the rules. It is also stated that in pursuance of the directions of this Court in OA-9/99 respondents themselves created a post of Driver and adjusted the applicant against that post and regularised him being an OBC candidate.

8. Having regard to the ratio laid down by the Apex Court in Gujarat Agricultural University's case (supra) ends of justice would be duly met if these OAs are disposed of with a direction to the respondents to consider

the claims of the applicants for regularisation against group "D"/Drivers posts subject to their being eligible and availability of vacancies with the respondents in any unit of the respondents. However, being a model employer I earnestly hope that the respondents shall also take up the issue of creating posts in Group "D"/Drivers in accordance with law. Applicants who are continuing on the strength of our status quo orders and as the respondents have fairly stated that they have availability of work they may be continued subject to their eligibility and availability of work with them.

9. Both the OAs stand disposed of accordingly.

No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."