

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 786/89 198
T.A. No. with MP 833/89

DATE OF DECISION 02.02.1990.

Shri Ram Nath Singh & Another Applicant (s)

Shri R.V. Sinha Advocate for the Applicant (s)

Versus

Executive Engineer & Others Respondent (s)

Snri K.C. Mittal, Counsel for Advocate for the Respondent (s)
respondent No.1.

CORAM : Snri G.C. Lalwani, Counsel for respondent No.2

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice-Chairman(J))

The two applicants, who have filed this application under Section 19 of the Administrative Tribunals Act, 1985, are working as daily wages Beldars in the office of the respondents. The first applicant is working in the office of the Executive Engineer, Parliament Works Division-II, C.P.W.D. while the second applicant is working in the office of the Executive Engineer, PWD (Delhi Administration), Deen Dayal Upadhaya Hospital, Hari Nagar. They have sought for the following reliefs:-

- (i) to direct the respondents to put them on the pay scales of the Enquiry Clerk from the date of their appointment as they are performing similar duties as that of the Enquiry

Clerk;

- (ii) to declare that the action of respondent Nos. 1 and 2 reverting them from the post of Enquiry Clerk to that of Beldar is illegal, unjustified and unfair labour practice and in colourable exercise of executive powers; and
- (iii) to direct the respondents to regularise them in the post of Enquiry Clerk.

2. The pleadings in the case are complete. When the case was listed for admission and interim relief on 11.1.1990,

we perused the records of the case and heard the learned counsel of both parties. In our opinion, the application could be disposed of at the admission stage itself.

3. The facts of the case in brief are as follows. The first applicant was employed as Beldar (daily wages) on

10.9.84 under respondent No.1. Applicant No.2 was employed as Mate on daily wages basis on 6.1.1984 but subsequently he was employed as Beldar. They have passed

Higher Secondary examination. The first applicant also knows typewriting. Both of them contend that they have

been working continuously as Enquiry Clerks from the very beginning, but they are not being paid the salary and

allowances of Enquiry Clerks. They also contend that

they are eligible for appointment as Enquiry Clerks, but

they have not been regularised as such. The representations

made by them in this regard have been rejected by the respondents.

They contend that they were reverted by the respondents in

February, 1989 by verbal orders.

4. Respondent Nos. 1 and 2 have filed separate counter-affidavits. In the counter-affidavit filed by respondent No.1, it has been stated that applicant No.1 is working on Muster Roll as daily wages Beldar with effect from 10.9.84 and that he was never given the job of Enquiry Clerk. He has also not been asked to do any typing work. He has accepted overtime payment as Beldar.

5. In the counter-affidavit filed on behalf of respondent No.2, it has been stated that applicant No.2 was employed on Muster Roll on daily wages as Mate with effect from 5.1.84 to 5.3.84 and from 6.3.84 he was employed as Beldar. He was never posted as Enquiry Clerk. He had been assisting the Junior Engineer in the discharge of the Govt. duties with respect to the maintenance jobs by arranging materials, conveying instructions of the Assistant Engineer/Junior Engineer, other petty jobs and also writing complaints etc., in the complaint Register. He has been given comparatively softer type of jobs as Beldar. The question of his reversion never arose as he was never appointed as Enquiry Clerk. They have further stated that the applicant No.2 has completed the required length of service on Muster Roll on daily wages as Beldar and his case for regularisation as Beldar is under consideration of the respondents.

6. The applicants have not produced any documentary evidence such as appointment letter to substantiate their contention that they were doing the work of Enquiry Clerks from the date of their initial appointment. The mere fact

that they have assisted the respondents in performing some duties assigned to them, will not entitle them to be appointed as Enquiry Clerks. They would also not be entitled to the pay scale of Enquiry Clerks without being appointed to the post of Enquiry Clerks in accordance with the relevant rules and instructions.

7. The applicants have drawn our attention to a Circular Letter issued by the respondents on 4.7.88 which reads as follows:-

" Subject:-Absorption of muster roll workers on the Work-charged Establishment in C.P.W.D.

Sir,

In partial modification of this Directorate O.M. of even number dated 31.5.82 and 14.10.82, item No.(i) of para 4 of the said O.M. may be read as follows:-

(i) Those Muster Roll Workers who have rendered 240 days' service each in two consecutive years in a higher category may be regularised in the higher category even if they have worked in the lower category for some time subject to the condition that the services rendered in the lower category would not be counted for the purpose of seniority or for any other purpose and further subject to the condition that an option should be taken from the concerned Muster Roll Worker at the time of his absorption in the lower/higher category of Work-charged Establishment and such of them as opt for absorption in the lower category may be allowed to do so".

(vide Annexure A-10, page 38 of the paper-book).

8. The applicants have pointed out that the cases of two other Beldars who were initially appointed on daily wages have been regularised by the respondents in the light of the aforesaid Circular Letter dated 4.7.1988. This averment has not been controverted by the respondents in their counter-affidavits.

8/

9. In the facts and circumstances of the case, we see no merit in the present application^{but *a*} we direct the respondents to consider the case of the applicants for regularisation in terms of the Circular Letter dated 4.7.88 mentioned above and to confer on them the benefits envisaged therein subject to their fulfilment of the requisite qualifications and experience. The application is disposed of at the admission stage itself, with the above directions.

The parties will bear their own costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 2/2/90

P.K. Kartha
2/2/90
(P.K. KARTHA)
VICE CHAIRMAN (J)