

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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U.A. No. 1447/88

Date of Decision: 5th January 1994

Hon'ble Shri J. P. Sharma, Member (J)

Hon'ble Shri B. K. Singh, Member (A)

Shri Subhash Chand
S/o Shri Bhajan Lal
Village Sadullapur
Bedpura
GHAZIABAD

.... Applicant

By Advocate Shri A. K. Bhardwaj

Vs.

1. Union of India
Through the Secretary
Ministry of Human Resources
Development, Shastri Bhawan
NEW DELHI

2. The Director General
Archaeological Survey of India
Janpath
NEW DELHI 110 011

..... Respondents

By Advocate Shri M. L. Verma

O R D E R (ORAL)

Hon'ble Shri J. P. Sharma, Member (J)

The grievance of the applicant is that he has been working as Marksman on daily wages in Group 'C' in the Archaeological Survey of India, Central Antiquity Collection Section, Purana Qila, New Delhi. The grievance is that inspite of dispute raised before the Assistant Labour Commissioner, the respondents have not taken any stand for regularisation of service of the applicant against Group 'C' post.

2. The relief claimed in the application is for a direction to the respondents to regularise the applicant in Group 'C' post where he is working at

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present, (i.e. on the date of the filing of the OA).

He had further prayed for the grant of salary being given to the regular employees from the date of his appointment in Group 'C' post with all consequential privileges and benefits as well as the seniority from the original date of appointment.

3. The matter came before the Bench on 22nd August, 1988 when a notice to the respondents on grant of interim relief was issued and vide Order dated 29th September, 1988 the Bench directed the respondents to maintain the status-quo and the applicant be not reverted from the present post. This interim direction is in force even now.

4. The respondents contested this application and in their reply, took the stand that the applicant was appointed as casual worker (skilled) on daily wages. He was not a Marksman as alleged. There are different qualifications made for appointment to the post of Marksman as per relevant Recruitment Rules. The applicant has no claim for the post of Marksman. The respondents have also given details of the duties of Marksman in para-5 in their reply. Thus, according to the respondents, the applicant cannot be regularised on a Group 'C' post of Marksman. The respondents have also averred in the reply that the applicant was

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offered Group 'D' post twice but he did not give his option for being regularised in a Group 'D' post.

5. We have heard the learned counsels of the parties at length and have gone through the record of the case. The contention of the learned counsel for the applicant is, on their own admission, the respondents are continuing the applicant of a Group 'C' post since his appointment w.e.f. 1st May, 1980, in the Archaeological Survey of India on daily wages and he worked there till 15th May, 1992. Subsequently he was made Assistant Store Keeper on the same wages upto August, 1992, in view of the order of the Tribunal that status-quo of the applicant has not been disturbed and he is drawing the same wages as earlier was paid to him. The learned counsel therefore, on the strength and length of service of the applicant, argued that the applicant has a claim for regularisation. In support of this contention, the learned counsel has placed their reliance on the authority of Shri B. N. Saxena Vs New Delhi Municipal Committee and Others reported in A.I.R. 1990 S.C.2021. We have gone through the reported case. Here the NDMC has revised the qualification for the post of Head Draftsman as is evident from para-5 of the report:

"Head Draftsman: From Senior Draftsman on seniority seniority-cum-selection basis. However, the minimum qualification should be a Diploma with a minimum of 3 years service as Senior Draftsman in the grade of Rs.250-400 or a total of 6 years service as Senior and Junior Draftsman. The question of outside recruitment does not arise."

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The earlier qualification was:

"Matric with Diploma/Certificate in Draftsmanship from a recognised institution with 3 years experience in preparation of Engineering Drawings in an Electric supply undertaking or an engineering manufacturing organisation."

The Hon'ble Supreme Court observed that the second limb of the rule was evidently to benefit all those persons who have gained sufficient experience as Senior and Junior Draftsman without possessing any qualification. Thus, the present case does not come to the help of the applicant - firstly, he has worked only as a casual labourer; secondly, no ^{letter} appointment/to the post of Marksman issued by the competent authority has been filed nor averred in the application itself and neither argued during the course of arguments. The contention of the respondents therefore that the applicant was appointed as casual labour(skilled), has got a force unrebutted either in averment or by document.

6. The learned counsel for the applicant referred to Jodhpur C.A.T. Judgement in the case of Shri Satish Sharma and others versus Union of India and others (A.I.S.L.J. Vol.41 of 1991(3). In this reported case, the petitioners who were engaged on the project as skilled artisan staff as Mason Mistry and according to their category and grade, they were given temporary status in grade 950-1500 on completion of 360 days continuous service from the date of their

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appointment. Thereafter, the applicants were also allowed the grade Rs.1200-1800 from various dates. The petitioners of that case represented against the grant of temporary status in the lowest category of Class-III staff. The petitioners were informed that the post of S.O.M./I.O.U. in Class-III categories other than artisan cannot be filled by screening. The respondents thus have conferred temporary status of Class-III to the petitioners of that case.

7. Coming to the case in hand, there is a Recruitment Rule for ^{post} the/of Marksman. The eligibility for appointment 100 per cent by direct recruitment is matriculation and a Certificate in Draftsmanship (Civil) or art from a recognised institution. The applicant though a Matriculate, does not have any Certificate in Draftsmanship (Civil) or art of a recognised institution. Whether the applicant can be said to be skilled to qualify for the post of Marksman when judged from the Recruitment Rules, the simple answer is, 'No'. If in the exigencies of service on administrative grounds the applicant had been taken on Master Roll on casual works as a stop-gap-arrangement and that after continuing for years, that would not by itself confer any right on such an incumbent to be appointed to the post of Marksman against the provisions

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of the statutory rules. The respondents have also took the stand in their reply that the duties of Marksman have been different than those which were taken from the applicant. The duties of the Marksman are:

- i) Writing labels, preparing charts etc., marking pottery, other finds, pegs etc. and maintenance of stores relating to his work;
- ii) Assisting Draftsman and Technical Assistants;
- iii) Supervision of Watch-and-Ward work of the museums in consultation with the Superintending Archaeologist for Museums/Curator.

The respondents have annexed to the counter a chart of the duties of Marksman at Annexure-III. The applicant therefore cannot be said to be similarly placed as a Marksman according to the duty chart as well as the Recruitment Rules.

8. The respondents have given an option to the applicant to opt for absorption in Group 'D' post. But the applicant has not exercised that option.

9. The Hon'ble Supreme Court in the case of the State of Haryana versus Shri Piara Singh reported in A.I.R. (S.C.) P.2130 laid down that when there is exigencies of service and ad hoc appointment are made, persons should be drawn from Employment Exchange and those who have worked for a number of years and are eligible according to the departmental rules, may be regularised if the vacancy is

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continuing for years together. In the present case, the applicant is not eligible for the post for which he aspires to be absorbed ~~or~~ or regularised since the date of his appointment e.i. w.e.f. 1980.

10. The learned counsel for the respondents have also taken their stand that the application is beyond the jurisdiction of this Tribunal as earlier the matter was also considered by the Industrial Tribunal(Labour Court), on a reference by the Union of which the applicant was the member and there was a reconciliation proceedings between the management and the Union. He has also referred to Section 29 of I.D. Act, 1947 an authority of Madras Bench C.A.T. reported in A.I.S.L.J. 1992 Vol.2 P.112 Shri S. Rurushtaman & others versus Union of India. We are not considering this aspect at all. But the case of the applicant has been on being engaged as a casual labour Marksman and having been allowed to continue for years together, he has sought relief of regularisation of service. So this Tribunal has jurisdiction over the matter.

11. Having given a careful consideration to all the aspects of the matter, we find that the applicant has no case for regularisation to Group 'C' post of Marksman. However, it will not be a hurdle to the

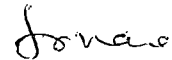
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respondents to take the matter of the applicant in relaxation of the rules and consider him on his representation for any other post but that will not give him any further course of action to agitate before the Tribunal. No costs.



(B. K. Singh)
Member (A)



(J. P. Sharma)
Member (J)

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