

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

Original Application No. 1480 of 1987

Shri Pal : : : : Applicant

## VERSUS

Union of India and Others ....., Respondents

COR AM:

Hon. Mr. Justice U.C. Srivastava, V.C

Hon. Mr. S.R. Adige, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as skilled Belder on 16.10.74 @ Rs. 6.84/- per day in the Road Material Testing Laboratory P.W.D (Delhi Administration). According to the applicant he was assigned the job of conducting the tests of bitumen, concrete and soil independently, which job is done by Research Assistant/Technical Assistant or an Overseer/Junior Engineer and he possesses requisite qualifications for conducting the above tests. As he has been performing the job Research/Technical Assistant he was entitled to Time Scale pay in the scale of Rs.425-700 as against the payment of Daily wages for skilled Belder to him by the respondents. His grievance is that he has been denied pay for the job of Research Assistant which is a job of permanent nature, attracts regular pay scale of Rs.425-700. Since the applicant has been doing the job which is being done by the employees in the

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scale of Rs.425-700 he is entitled to the payment of wages in the scale of Rs.425-700 from the date of his initial appointment. But the ~~xxx~~ applicant has been treated to be Class IV employee despite doing work of Technical Assistant simply to den him his wages quite contrary to the principles of law laid down by Hon'ble Supreme Court namely equal pay for equal work <sup>which</sup> is a guaranteed right.

2. The applicant was categorised highly skilled worker vide office order dated 7.8.76, even then the applicant has not been paid or put in regular pay scale and is being paid on daily wage basis where as the applicant is entitled to pay scale Rs.425-700. Further more there is provision for the post of Research Assistant duly sanctioned by the Government of India. The applicant approached the Hon'ble Supreme Court of India by filing a writ petition ~~earlier~~ thereafter he was approached this Tribunal which was allowed to be withdrawn. It appears that the applicant earlier approached the Supreme Court the said case in (Civil petition No. 1006/83) decided on 23.2.84. The Supreme Court passed the following order.

" From the material placed before us at the hearing of this case which is not yet concluded, we are ~~prima facie~~ of the view that the petitioner who is at present employed as a skilled Belder, a Non Technical Supervisor on a daily wages basis ~~is~~ is infact and has infact been doing the work of testing of concrete

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bitumen and soil for the last ten and more years. Infact in one of the letters which passed between the officers of the department is expressly mentioned that it is necessary for smooth working of the department that the posts of Laboratory Assistants should be created and it is also added that the applicant is one of those persons who has been doing the work of Laboratory Assistant though employed as skilled Belders. We think that in fairness a suitable post should be created and the applicant be appointed to that post. We are adjourning this case for four weeks....."  
But earlier on 5.2.87 the applicant was allowed to withdraw this application and that is why the applicant has approached this Tribunal.

3. The respondents have opposed this application and pointed out that the applicant has no vested legal right . He is not entitled to a writ of mandamus to compel the respondents to create a post of Research Assistant. The Laboratory in which the applicant is working is not a research laboratory it is merely a testing laboratory and the tests are carried out by qualified engineers. The applicant only helps the engineers in conducting the tests, and ~~the applicant~~ was never assigned the work of conducting the tests for road materials independently. There is no sanction for the creation of the post of Research Assistant in the laboratory where the petitioner is working. ~~the applicant~~ is not technically qualified to conduct the tests at all. ~~and~~ is merely a science ~~graduated~~ <sup>and he</sup> Rukhsar

graduate. Further the laboratory in which the applicant is working is not a research laboratory. The applicant was paid subsequently in accordance with the fair wages schedule from time to time as ordered by Delhi Administration, and he is getting the wages and he has no right to get the pay scale as there was no particular post for him and no such post had been sanctioned.

4. Learned counsel for the applicant contended that the applicant has been working as a casual worker for the last 20 years and it itself indicates that the work is available and even then a regular pay scale was not given to him. In this connection a reference is made in a case of "State of Haryana and Others Etc. Vs. Piara Singh and Others Etc; Etc" 1992(2) wherein it has been observed that normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such adhoc or temporary employee. Secondly an adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by a

only by a regularly selected employee. It will be more in conformity with Constitution aspirations instead of ~~work~~ taking work from casual workers it is desirable to have regular workers to such regular work. This is necessary to avoid arbitrary action on the part of the appointing authority. Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration. In the instant case it is stated that the respondents have not yet considered the question of regularisation of the applicant and ~~work~~ have not worked out any scheme in the matter for employees like the applicant. As a matter of fact this consideration should have been done. It is only after due consideration the same would have been either accepted or rejected assigning the reasons for the same. The Supreme Court had earlier issued an interim order referred to earlier in this judgement. Notwithstanding the application was ultimately withdrawn even then the direction normally have been considered in view of the fact that the work is available and the work is being taken from the persons like the applicant. It is not necessary to make reference to Supreme Court decision regarding payment of same pay scale to casual and daily woker workers as is payable to regular employees performing similar duties and functions.

5. Accordingly the respondents are directed to consider the case of regularisation of the applicant as the pay scale which is to be paid to the regular

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employees performing the same work in the same department or similar other department and let this consideration be done within a period of three months. The respondents shall also shall consider the feasibility of creating posts as directed by the Supreme Court in its interim order referred to above. Let it be done. The application stand disposed of finally with these directions.

*Mr. Falig*  
Member (A)

*Li*  
Vice Chairman

Dated: 17.3.1993

(Uv)