

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 3041/2004
M.A. No.74/ 2008

New Delhi, this the 14th day of March, 2008

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. SHAILENDRA PANDEY, MEMBER (A)

1. Kamal Singh
S/o Shri Sadhu Singh
Aged about 39 ½ years,
R/o Quarter No.42,
Road No.6,
Andrews Ganj,
New Delhi.
2. Shiv Charan
S/o Shri Chandrika Prasad
Aged about 40 ½ years,
R/o C-8/339, Sultan Puri,
Delhi-110088.

...Applicants

And both employed as
Chowkidars in the
Council of Scientific and Industrial Research,
C.S.I.R. Complex, Pusa,
New Delhi-110 012.

By Advocate: S.S. Lingwal.

Versus

Council of Scientific and Industrial Research

Through its Director-General,
Rafi Marg,
New Delhi.

..Respondents


By Advocates: Shri Manoj Chatterjee and Ms. K. Iyer.

ORDER

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this OA, applicants have sought the following relief:-

" To consider the applicants for
recruitment/regularization against any two of these
six posts so advertised in view of the order and



judgment of the Hon'ble Tribunal dated 10th May, 2001 in Original Application No.320 of 2000".

2. It is submitted by applicants that they joined Council of Scientific and Industrial Research (hereinafter referred to as CSIR) on 24.4.1989 and 3.12.1987 respectively as chowkidars. Since they had driving licence for light motor vehicles, they were utilized as drivers. They requested for being appointed as drivers. Respondents got them trade tested through Central Road Research Institute (hereinafter referred to as CRRRI). On being found fit and after medial examination, they were appointed as drivers w.e.f. May, 1989 and continued as such till November, 2001. However, respondents were still paying them as chowkidars even though they were made to work as drivers, therefore, they filed O.A. No. 320/2000. This O.A. was allowed on 10.05.2001 by directing the respondents to pay the applicants the difference of salary and allowances of the post of Staff Car Driver minus the wages which has already been paid to them as group 'D' staff with effect from the date they have been performing the duties of Staff Car Driver.

3. These directions were complied with by respondents only when notices in C.P. were issued but in order to teach them a lesson, applicants were immediately reverted as chowkidars w.e.f. 21.11.2001. Being aggrieved, applicants again filed O.A. No.709/2002 seeking restoration as staff car drivers and regularization. This O.A. was dismissed on 26.2.2004 (page 34 at 41) as respondents had stated that there were no vacancies and 6 drivers were already in position. Being aggrieved, applicants filed Writ Petition No.8500-01/2004 which is still pending.



4. Thereafter, respondents issued circular dated 7.7.2004 advertising 3 posts of drivers (page 27). Applicants also applied but were not being considered on the ground they are not eligible. It is in these circumstances that applicants have filed the present O.A.

5. They have submitted that in 1989 when applicants were appointed as drivers, requirement was only 5th class pass. They cannot be denied consideration on account of any change made in the Recruitment Rules subsequently specially when they have 12 years experience of working as drivers with respondents. Learned counsel relied on the judgment of **Bhagwati Prasad with Smt. Bhagwati Devi and Others Vs. Delhi State Mineral Development Corporation, ATR 1990 (1) SC 152.**

6. He further submitted that in other departments viz. Regional Meteorological Centre also requirement was only primary class pass for drivers, therefore, there is no justification to treat them as ineligible or not to consider them.

7. Respondents have opposed the O.A. They have submitted that the present application suffers from the principles of res judicata inasmuch as the reliefs sought for and the facts and circumstances are similar to the earlier O.A. filed by the present applicants as well as writ petition filed by the present applicants before the Hon'ble High Court of Delhi numbered as 8500-1 of 2004. As advertised and as per the relevant rules of the respondents, the post of the staff car drivers fall within the isolated categories of posts. The basic qualification being 10th class pass or equivalent with 5 years driving experience in LMV/HMV and age requirements is 28 years. None of the petitioners fulfill the basic qualification/eligibility with regard to the above isolated category of post because Shri Kamal Singh was appointed in general category on

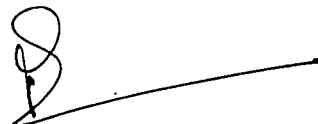


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3.12.1987 on the post of Chowkidar, his date of birth is 21.6.1963 and educational qualification is VIIIth pass. Similarly the applicant No.2 was appointed in S.C. category, also on the post of Chowkidar on 25.4.1989, his date of birth is 01.03.1962 and educational qualification is VIIIth pass. There is no provision of relaxation of the basic qualification/eligibility with regard to the isolated categories of posts. They have thus prayed that O.A. may kindly be dismissed. They have relied on **Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and Others, 1994 (3) AISLJ 87.**

8. We have heard both the counsel and perused the pleadings. Counsel for the respondents strenuously argued that this O.A. is barred by res judicata on the ground that the same matter is pending before the Hon'ble High Court of Delhi. However, counsel for the applicants submitted that earlier the applicants had sought direction to the respondents to regularly appoint them as staff car drivers by quashing the order whereby they were reverted from staff car drivers to chowkidars whereas in the instant case the applicants have sought direction to the respondents to consider them against the advertised posts. They are not pressing regularization. Moreover, their earlier O.A. was dismissed in view of the statement made by respondents that no vacancies are available. Now that position has changed, therefore, this O.A. may be decided on its own merits.

9. Since the applicants are seeking consideration against the advertised posts, we are deciding it on merits. It is relevant to note that at the time of admission, 2 posts were kept vacant on 24.12.2004, therefore, this O.A. needs to be decided. Admittedly, both the applicants were initially engaged as chowkidars in group 'D' post. However, since they were



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having license and had requested, they were allowed to work as drivers after taking their test. They were made to work as drivers but were being paid as a group 'D' employee only, therefore, they had filed O.A. No. 320/2000 seeking pay and allowances attached to the post of staff car drivers. The said O.A. was allowed with a direction to respondents to pay the applicants difference of salary and allowances of the post of Staff Car Driver minus the wages which has already been paid to them as group 'D' staff with effect from the date they have been performing the duties of Staff Car Driver. These directions were complied with but simultaneously applicants were asked to report for duty as chowkidars to watch and ward Assistant CSIR complex with immediate effect vide memorandum dated 21.11.2001. It is at that stage applicant filed 2nd O.A. bearing No.709/2002 seeking the following relief:-

"i) To quash the impugned office Memoranda dated 21st November, 2001 at Annexures 'A' and 'B' as being illegal, arbitrary and issued with a mala fide intention to teach them a lesson for having dragged the respondents to the court of law.

(ii) Consequent to relief at (i) being granted to direct the respondents to regularly appoint the applicants as Staff Car Drivers from the date they qualified all the tests and were made to work as Staff Car Drivers officially.

(iii) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case".

This O.A. was dismissed on 1.3.2004 by observing as follows:-

(i) In our considered view, the present O.A. so far as it relates to regular appointment of the applicants as Staff Car Driver is hit by the provisions relating to doctrine of res judicata or in any case doctrine of constructive res judicata because in the 1st O.A. also applicants had



sought direction to the respondents to regularly appoint them as staff car drivers from the date they qualified all the tests and were made to work as staff car drivers officially. This relief was not granted though prayed, therefore, should have challenged the Ist judgment, if they were aggrieved. They cannot be allowed to re-agitate the same issue again.

(ii) It was also held applicants were never regularly appointed as staff car drivers. It was noted that applicants had represented before the respondents that they knew driving and had valid driving license, therefore, they were interested in working as Staff Car Driver as and when required. Merely because the applicants were allowed to work as Staff Car Drivers, they could not claim to have become eligible for regular appointment as Staff Car Driver. Nothing has been brought on record to suggest that the applicants went through the normal recruitment procedure for being selected as Staff Car Driver as per prescribed rules. Reliance was also placed on **Dr. Arundhati Ajit Parogonkar Vs. State of Maharashtra and Others, 1994 (5) SLR 234** and it was specifically held that even on merits, the applicant cannot be held to be eligible to hold the post of Staff Car Driver as claimed. It was also noted that Shri Kamal Singh was allowed to work as Staff Car Driver as per his request during the course of suspension of one Shri Harpal Singh from 5.9.1989 to 12.2.1991. It was also noted that due to shortage of Staff Car Drivers, applicant Kamal Singh continued to discharge the duties of the driver until 19.11.2001 when he was repatriated back to the original post of chowkidar. Similarly Shiv Charan was utilized for driving the staff car as and when required. It was also noted that 6 drivers were already working against sanctioned 6 posts. O.A. was thus dismissed by observing as follows:-



“ We do not find any justification to direct the respondents to grant the reliefs as claimed by the applicants. In the result, this OA is dismissed without any order as to costs”.

This judgment was challenged by the applicants before Hon'ble High Court of Delhi which Writ Petition is still pending.

10. The moot question in the present OA is, whether any directions can be issued to the respondents to consider applicants for the above posts simply on the basis of experience, even though they do not fulfill the eligibility qualification as per the Recruitment Rules?

11. It is not disputed by the applicants that both the applicants are only VIIIth pass whereas requirement of Recruitment Rules is 10th pass. Respondents have stated categorically there is no provision of relaxation of basic qualification/eligibility with regard to isolated category of posts. It is correct that applicants may have had the experience of driving staff car but that alone is not sufficient because at the time of regular appointment, one must fulfill the eligibility qualification. Earlier Hon'ble Supreme Court had taken the view in Bhagwati Devi's case (Supra) as follows:-

“Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications.”.

12. However, thereafter different view has been taken by Hon'ble Supreme Court. In 1994 (3) AISLJ page 87 in Dr. Arundhati's case it was held by Hon'ble Supreme Court as under:-

“ Nor the claim of the appellant, that she having worked as Lecturer without break for nine years on the date the advertisement was issued she should be



deemed to have been regularized appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been deemed to have been regularized as she had been working without break for nine years".

13. In State of M.P. and Others Vs. Shyama Pardhi etc. reported in 1996 (1) SLR SC 66 it was held as under:-

"It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was no right in directing the reinstatement of respondents. The question of violation of principles of natural justice does not arise".

14. In a more recent judgment given by Hon'ble Supreme Court in the case of Secretary, State of Karnatka and Others Vs. Uma Devi and Others reported in 2006 (4) SCC 1 matter has now been settled once and for all wherein it has been emphasized that (1) when a person approaches the court seeking a writ, court must ask itself whether the person before it has any legal right to be enforced, (2) considered in the light of the very clear constitutional scheme, it cannot be said that the casual employees have a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution, (3) it is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions



for continuance of those who have not secured regular appointments as per procedure established. The High Courts acting under Article 226 should not, therefore, ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme and. (4) on a survey of judgments of the Supreme Court on the point, the predominant view is seen to be that appointments made without following the due process or the rules for appointment did not confer any right on the appointees and that the court cannot direct their absorption or regularization or re-engagement or making them permanent. It was held as follows:-

“ While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

15. In view of above, it is now settled position that merely having worked on the post does not give any right to the applicants to claim consideration for regular appointment. Since appointments are required to be made as per Recruitment Rules, any person who applies for the post must fulfill the requisite qualification. Since posts are advertised



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now, applicants have to fulfill the qualifications, now required as per the Recruitment Rules. Earlier it might have been Vth pass, but at that time applicants were not appointed by a valid selection process nor posts were advertised, therefore, merely because they were allowed to work as staff car drivers as a stop gap arrangement it cannot be stated they were regularly appointed at that time. It has already been held in the judgment dated 10.5.2001 in O.A. No. 320/2000 that applicants were allowed to work temporarily after taking their trade test on as and when required basis as per applicants' own request. Admittedly from 2001 onwards applicants are working as chowkidars, therefore, if they want to be considered now for staff car drivers pursuant to the advertisement as a direct recruit, they must fulfill the requisite qualification. Admittedly, they are only VIIIth class pass whereas requisite qualification as per Recruitment Rules is 10th class pass, therefore, they are not eligible to be considered. In these circumstances, we cannot give any direction to consider the applicants de hors the rules.

16. It is seen vide order dated 24.12.2004 this court had directed the respondents to keep 2 posts vacant. Since we do not find any merit in the OA, the same is rejected. Respondents would be at liberty to fill those 2 posts in accordance with law. No order as to costs.



(Shailendra Pandey)
Member (A)

Rakesh


14/3/08-

(Mrs. Meera Chhibber)
Member (J)