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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1703/2004

New Delhi this the 21st day of August, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Chander Bhan
S/o Shri Imrat Singh,
Central Public Works Department,
RML Hospital Division,
Delhi.

... Applicant.

✓ (By Advocate Shri S.N. Anand)

Versus

1. The Secretary,
Ministry of Urban Development
And Poverty Alleviation,
Nirman Bhawan,
New Delhi.
- ✓ 2. The Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi.
3. The Superintending Engineer (Civil),
Coordination Circle,
CPWD IP Bhawan,
New Delhi.
4. The Executive Engineer,
'U' Division,
CPWD, CGO Complex,
Lodhi Road,
New Delhi.

... Respondents.

(By Advocate Shri Rajeev Bansal)



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

By this O.A., applicant has challenged the order dated 8.6.2004 whereby his request for regularisation of his casual service as Enquiry Clerk from the date of his initial appointment i.e. 8.2.1982 has been rejected.

2. It is submitted by the applicant that he initially joined CPWD as casual worker on the post of Enquiry Clerk on muster roll and continued to work as such for 17 years.

Since he was not being regularized, he filed OA 524/2003.

The O.A. was disposed of giving liberty to the applicant to make a self contained representation, with direction to respondents to consider the same and pass a reasoned and speaking order. Applicant was asked by letter dated

7.8.2003 to explain as to on which post he wanted to be regularized. Applicant vide his application dated 22.8.2003

requested the respondents to regularize him as Mate w.e.f.

8.2.1982 but respondents gave him fresh appointment as

Mate w.e.f. 2.6.1999 thus denying his 17 years service from

1982 onwards which, according to the applicant, is wrong

because it is stated by the applicant that in an identical case

of Smt. Sheela Rani Vs. Union of India & Ors. (OA

1926/2003), respondents were directed to consider the case

as Mate from 17.11.1982, therefore, he should also be given

the same benefit.



3. Respondents have opposed this O.A. They have taken a preliminary objection that applicant had also earlier filed OA 524/2002 for similar relief which has not been disclosed by him. thus he is concealing an important information from this Court.

4. On merits, they have explained that vide letter dated 23.12.1998, option was taken from the applicant as there was no recognized category of Enquiry Clerk available under the work charged/regular classified establishment of CPWD and he was working as Enquiry Clerk. Applicant exercised his option for being regularized in the category of Mate, therefore, even though category of Mate was declared to be a dying category in CPWD yet after looking at the case of applicant sympathetically, his services were regularized as Mate by getting one post revived w.e.f. 3.6.1999, therefore, now he cannot be regularized as Enquiry Clerk as is claimed by him in Para 1 because the post of Enquiry Clerk is neither borne on work charged establishment nor on regular classified establishment of CPWD, therefore, Department cannot consider regularisation of any worker against a non-existing category of post. They have further explained that the posts of LDC are filled amongst the candidates declared successful by the SSC through the competitive examinations conducted by them from time to time, which has not been cleared by the

applicant. They have thus prayed that the O.A. may be dismissed.

5. We have heard both the counsel and perused the pleadings as well. It is seen that applicant had earlier filed OA 524/2002 wherein also he had sought direction to the respondents to regularize his services with effect from the date of his initial appointment i.e. 8.2.1982 (page 15). He had also placed reliance on the orders passed by this Tribunal in the case of Smt. Sheela Rani Vs. Union of India & Ors. (OA 2747/1999). The said OA was disposed of by directing the applicant to submit a self contained representation to Respondent No. 2 within one month and the respondents shall pass a reasoned and speaking order within three months thereafter. Since directions were not being complied with by the respondents, applicant had filed CP No. 109/2004, wherein it was observed that respondents have asked the applicant to intimate the name of the post on which he seeks regularisation. Applicant is stated to have intimated the respondents by Annexure-D dated 22.8.2003 that he may be regularized on the post of Mate w.e.f. 8.2.1982 instead of 3.6.1999. The said CP was disposed of by directing the respondents to pass a detailed and speaking order on the representation given by the applicant on 22.8.2003. Pursuant to the said orders, respondents passed order dated 8.6.2004 wherein they have explained that as per applicant's own

option, he was regularized as Mate w.e.f. 3.6.1999 because there was no post of Enquiry Clerk either on work charged or regular classified establishment of CPWD and the post of Mate was got revived as a special case only in order to regularize the applicant even though it had been declared as a dying category. In these circumstances, naturally, applicant could have been regularized only when the post became available as regularisation is dependent on availability of vacancies. Respondents have categorically stated that there was no post of Enquiry Clerk borne either on work charged or regular classified establishment of CPWD. Therefore, he cannot be regularized with effect from 8.2.1982 when no such post was available with the respondents.

6. Counsel for the applicant had relied on the judgment given by this Tribunal in the case of Sheela Rani (page 23) but perusal of the said judgment shows that in the said case reliance was placed on Shri Chander Bhan (i.e. applicant herein), who was stated to have been regularized w.e.f. 15.2.1999. It was also directed by the Tribunal that if necessary, respondents could have considered creation of supernumerary post to regularize her services. Accordingly, directions were given to the respondents to consider the case of the applicant therein in the light of the observations made above (page 23 at 28).

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7. It is correct that in the case of Sheela Rani (supra), this Court had given certain directions for regularizing the applicant therein from the initial date of appointment but as on date we have Constitution Bench judgment from the Hon'ble Supreme Court of India given in the case of Secretary, State of Karnataka and Ors. Vs. Uma Devi and Ors., reported in 2006 (4) SCC 1, wherein Hon'ble Supreme Court has emphasized the need to follow the Recruitment rules for appointment in Government. It has categorically been held that absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment de hors the constitutional scheme of public employment is not permissible as it would amount to creating another mode of employment, which is not in accordance with law.

8. It has also been held that 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. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length, since he might



have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on this ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. It was also held that when a person enters a

temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature.


Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made by following a proper procedure for selection. It was also held that 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.

9. In view of above judgment, applicant should thank his stars that he has already been regularized. Now he wants regularization from initial date of appointment, which cannot be given because there was no sanctioned vacancy. It is



correct that directions have been given by this Tribunal in other cases to regularise even by creating supernumerary posts but those judgments have lost their significance in the light of law now laid down by Hon'ble Supreme Court. We are definitely bound by the law laid down by the Hon'ble Supreme Court under Article 141 of the Constitution.

10. In view of above, we do not think the relief, as claimed by the applicant can be given to him by us. However, if respondents on their own decide to give some benefit to the applicant for his past 17 years service, this judgment would not come in their way. The O.A. is accordingly dismissed.
No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER (J)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

'SRD'