

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 576 of 1996

Allahabad this the 29<sup>th</sup> day of July 1998

Hon'ble Mr. S. Dayal, Member (A)  
Hon'ble Mr. S.K. Agrawal, Member (J)

Mohd. Ashfaq, S/o Late Mohd. Shafi, R/o C-9/89, Habibpura, Chetganj, Varanasi, Working as Casual Jeep Driver in the Office of the Superintendent of Post Offices, West Division, Varanasi.

Applicant.

By Advocate Sri Avnish Tripathi.

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communications, Dak Bhawan, Parliament Street, New Delhi-110001.
2. Post Master General, Allahabad Region, Allahabad.
3. Director Postal Services, Allahabad Region, Allahabad.
4. Superintendent of Post Offices, West Division Varanasi.

Respondents

By Advocate Sri N.B. Singh

O R D E R

By Hon'ble Mr. S.K. Agrawal, Member (J)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the respondents be directed to regularise the services of the applicant on the post of Jeep Driver in the pay scale of Rs.950-1500/- w.e.f. July, 1989 and to pay salary and other benefits as available to Jeep Driver.

2. In Brief, the facts of the case as stated by the applicant are that the applicant was engaged as casual Jeep Driver by the office of respondent no.4 from July, 1989. Since then his work and conduct has been unblemished and there is no complaint regarding the work and conduct of the applicant. The respondent no.4 vide letter no.13-2/24-Driver/88-89, dated 11.4.89 addressed to the District Employment Exchange Officer, Varanasi, called the names of suitable candidates and in response to the said notification the respondent no.4-Employment Exchange, Varanasi, sponsored the name of the suitable candidates alongwith the name of the applicant. The applicant appeared for interview and trade test and, thereafter he was declared successful and the applicant was asked to resume the duty on 25.7.89 as casual Jeep Driver although no order of appointment was given to him. It is submitted that applicant was working on the said post of casual Jeep Driver, w.e.f. 25.7.89 with respondent no.4 and his work and conduct has been unblemished through out but the respondents did not take any action for the regularisation of the applicant on the post of Jeep Driver. He submitted the representation dated 25.5.90 and further representation dated 02.2.91. He has also submitted the representation dated 03.5.93, 04.6.93 and 21.9.95. in respect of his grievance for regularisation on the post of Jeep Driver. It is also submitted that the applicant is working on the post of Jeep Driver since July, 1989 but he is being deprived of the salary as well as other ~~benefits~~ benefits which are available to Jeep Driver and respondents are treating the applicant as daily wage Driver. It is, therefore, requested that respondents be directed to regularise the services of the applicant on the post of Jeep Driver and he should be paid salary and other benefits, which are available in the grade of Jeep Driver.



3. The counter-affidavit has been filed by the respondents. In the counter-affidavit, it is admitted that the name of the applicant alongwith other candidates were sponsored by the Employment Exchange and he was found suitable and was engaged as casual Jeep Driver. Since then he is working. It is also submitted that the applicant is not entitled for regularisation on the post of Jeep Driver as there is no sanctioned post of Jeep Driver. The applicant is working as Casual Car Driver since 25.7.89 and is paid daily wages. The applicant was called for interview for his work as casual Jeep Driver and he was found suitable and thereafter engaged as casual Jeep Driver, thus, he has no right to claim regularisation. In this way, on the basis of counter-affidavit filed by the respondents, the respondents have requested to dismiss this O.A. with cost. R

4. Rejoinder to the counter-affidavit has also been filed, in which the applicant has reiterated that there exist a sanctioned post of Jeep Driver in the office of respondent no.4 on which the applicant has been appointed after observing all required formalities and relevant recruitment rules. He is continuously working since 25.7.89 and as such the applicant is legally entitled for regularisation.

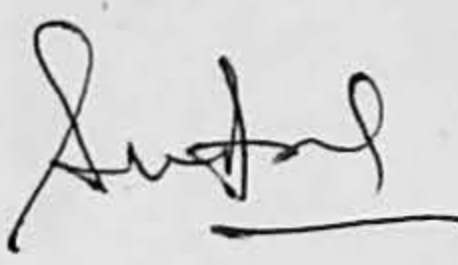
5. We have heard the learned lawyer for the applicant and learned lawyer for the respondents and have perused the whole record.

6. Learned lawyer for the applicant has submitted that the applicant is continuously working as casual Jeep Driver since 1989 and admittedly he has completed 240 days in every calendar year since 1989, therefore, the applicant is entitled for regularisation on the post of Jeep Driver.

7. On the other hand, learned lawyer for the respondents has submitted that in the absence of sanctioned post of Jeep Driver, regularisation of the applicant on the post of Jeep Driver is not possible, therefore, the applicant is not entitled to relief sought for.

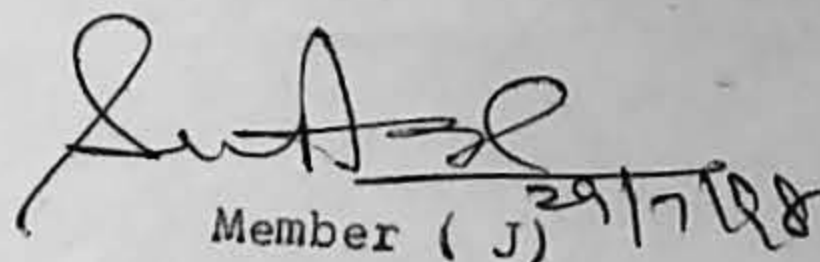
8. We have given thoughtful consideration on the rival contention of both the parties and perused the whole record.

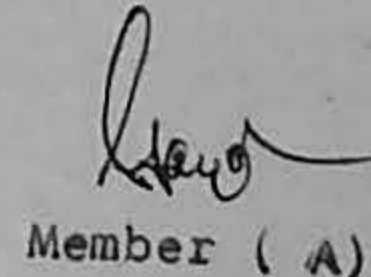
9. Regularisation is not an empty formality, nor it can be done automatically. Departmental authority before regularising the services of a casual or daily wage worker will scrutinise the case regarding his suitability, eligibility and medical fitness etc. and if he is found suitable and the post for which regularisation is sought for, is available in the department, then only the case of a person can be considered for regularisation. The Hon'ble Supreme Court in the case of 'Ghaziabad Development Authority Vs. Vikram Chaudhary (1995) 5 SCC 210', has held that so long as the applicants are temporary daily wage employees and there is no regular post available for appointment, the daily wager can not be given regularisation of service and can also not be paid at par with regular employees.

 10. In another case of 'State of U.P. Vs. Madhyamik Shiksha Parishad Shramik Sangh reported in (1996) 7 SCC 34' the Hon'ble Supreme Court has held that directions to consider regularisation of services on the basis of seniority and length of service can only be given if some posts are created. The creation of posts is a condition precedent for filling up of the posts on a permanent basis. The Hon'ble Supreme Court has further held in that case that administrative

exigencies and the need for creation of a number of posts are matters of executive policy by the appropriate Government. The Hon'ble Supreme Court also held that the High Court was not empowered to direct regularisation of services without there being any post. There has been a catena of judgments thereafter also, which very clearly stipulates that there can not be any regularisation without availability of a post on regular basis. A latest judgment on this issue is 'H.P. Housing Board Vs. Om Pal (1997) SCC 1, page 269', which supports the earlier view.

11. Admittedly the applicant is working as casual Jeep Driver since 1989 and no complaint is against his work, conduct and behaviour. The applicant was found suitable out of 12 candidates sponsored by the Employment Exchange and thereafter he was engaged as casual Jeep Driver. In 'Daily Rated Casual Labour Employment in P & T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India 1988 S.C.C. (L & S) 138', the Hon'ble Apex Court observed that Government cannot take advantage of its dominant position and compel any worker to work even as a casual labourer on starvation wages. In the instant case although the applicant is continuously working as casual Jeep Driver since July, 1989 but there is no sanctioned post of Jeep Driver available with the respondents, therefore, no direction can be given to the respondents regarding the regularisation of the applicant on the post of Jeep Driver. However, it is observed that whenever the post of Jeep Driver is created with the respondents, the respondents should consider the case of the applicant taking into consideration the experience, conduct and behaviour of the applicant very sympathetically. With these observations, this O.A. is dismissed. No order as to costs.

  
Member ( J )

  
Member ( A )