

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 606 OF 2004

ALLAHABAD THIS THE 25 DAY OF 8, 2008

HON'BLE MR. A.K. GAUR, MEMBER-J

Tejpal Singh, S/o Sri Jaggan Singh, R/o Nand Puri Colony, near Purana Kaparo Mill, District Saharanpur.

.....Applicant

By Advocate Shri Rakesh Verma

V E R S U S

1. Union of India through Secretary, Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Sr. Superintendent of Post Offices, Divisional Office, Saharanpur.

.....Respondents

By Advocate: Sri S. Singh

O R D E R

Through this O.A., the applicant has claimed for quashing the impugned order dated 17.5.2004 and also a direction to the respondents to regularize the services of the applicant on the post of Group 'D'.

2. The facts giving rise to this Original Application are that earlier the applicant had filed O.A. no. 137 of 2004 before this Tribunal, which was disposed of by this Tribunal by means of order dated 16.2.2004 with a direction to the respondent no.3 to consider and decide the representation of the applicant. In compliance of the order of this Tribunal dated 16.2.2004, the respondents passed the

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order dated 17.5.2004, which is impugned in this O.A.

3. The case of the applicant is that he was appointed as Part Time Sweeper on 1.9.1991 in Divisional Office at Saharanpur. The applicant has been getting his salary/wages by the Department of Posts every month. Further, it is alleged in the O.A. that the applicant being an old employee of the department had given several applications for regularization of his services, but he did not receive~~any~~ reply. The applicant has also placed reliance^{on} the Government order issued by the Government of India, wherein it is specifically mentioned that the employees who were working prior to 1.9.1993 should be regularized in service. The grievance of the applicant is that he has been working since 1.9.1991, but his case for regularization has been ignored by the respondents. Further, he has already made a series of representations for his regularization of his service, but no heed has been paid by the respondents. It is also averred in the O.A. that the working hours of the applicant has been increased by order dated 3.11.1997 passed by Sr. Superintendent of Post Offices.

4. Denying the stand taken by the applicant in the O.A., the respondents have contested the case of the applicant by filing detailed Counter Affidavit, wherein it is stated that the applicant was engaged as Part Time Safaiwala on 1.9.1991 for 4.30 hours daily only for cleaning the office and office campus. The working hours of the applicant was subsequently increased on his own request. It is also submitted that the applicant has submitted application/representation for regularizing his service into the cadre of Group 'D' but without waiting the decision on his representation; he filed

the O.A. before this Tribunal. Further, his wages are being paid as admissible as per rules. There are several other part time employees, who are senior to the applicant, their services have not yet been regularized. It is also contended by the respondents that the judgment dated 31.10.1992 cited by the applicant's counsel of Hon'ble Kerla High Court is not applicable in the present case as the facts of that case is quite different to that of the present case. Lastly, the applicant is junior most part time Sweeper in the Division and as such he is not entitled to be regularized.

5. The applicant has filed Rejoinder Affidavit reiterating the same facts, which has already been averred in the O.A.

6. I have heard the learned counsel for the parties and have gone the pleadings of the case and have given anxious thought to the submissions made by the rival parties during the course of hearing.

7. At the outset, I may refer the latest Constitutional Bench decision of Hon'ble Supreme Court in the case of Secretary, State of Karnataka & Others Vs. Uma Devi (3) and others reported in 2006 SCC (L&S) 753 wherein it has been held that the regularization is not and cannot be a mode of recruitment for any State. Under Article 162, there is no power to make appointment and if any such power could be made in violation of statutory rules, the Tribunal/High Court has no jurisdiction to frame the Scheme by itself or directing the framing of Scheme for regularization. In view of the decision aforementioned, I am of the considered view that the applicant has no case and as such the O.A. is liable to be dismissed. I order accordingly. No costs.

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MEMBER-J