

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

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Original Application No. 1189 of 1988

Sunil Bali

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Applicant

Versus

Union of India &
Others

::::::

Respondents

Hon'ble Mr. S. Das Gupta, A.M.
Hon'ble Mr. T.L. Verma, J.M.

(By Hon'ble Mr. S. Das Gupta, Member 'A')

This original application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs ;

1. That the respondents be directed to pay the same salary to the a-pplicant as is being paid to regular surveyors in the scale of Rs.1400-2300.to
2. That the respondents be directed to absorb the applicant in regular service in the department from the date of his initial appointment and to allow^{him} to continue.
3. To quash the advertisement/notice dated 12.7.1988 for filling the post of Surveyor in so far as it denies the rights of Muster Roll Employees to participate as departmental candidates and further direct the respondents to grant age relaxation with respect to the applicant, if so required.

2. The fact of this case ^{rise} is giving to this application are that the applicant was employed on 27.1.84

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by the Superintending Archaeologist, Agra Circle as a Muster Roll Employee on daily wages. He possessed a Surveyor certificate from Industrial Training Institute, Agra. The petitioner claimed that from the very beginning he has been performing the job of a Surveyor and was known as Assistant Surveyor or Survey Assistant. Although he has been performing the same job and duties as regularly recruited surveyor of the department, he has been paid only wages on daily basis at the rate of Rs.16/- per diem which gradually increased to Rs.25/- per diem.

3. The petitioner further submit that for filling one of the two vacant post of Surveyor in Agra Circle, an advertisement dated 12.7.1988 (Ann. - A-2) was issued by the respondent no.2 and that it specified that no application from Daily Wages/Muster Roll Employee will be entertained. The petitioner has therefore challenged this advertisement and has claimed the same pay as that of regular Surveyor instead of daily rated wages.

4. Resisting the claim of the petitioner, the respondents have submitted in their Counter-reply that the petitioner never worked as a Surveyor, but as a Casual daily rated worker he was engaged with various designations, namely, Beldar, Tape boy, Supervisor, Assistant to Surveyor and Skilled Labour etc. on daily wages basis ranging from Rs.12/- to Rs.25/- per diem fixed under the minimum wages act. They have further stated that the petitioner was not sponsored by the

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Employment Exchange. As regard the post of Surveyor which was advertised, they have contended that neither the petitioner applied for that post nor was sponsored by the employment exchange and as such he has no right to challenge the appointment to above post.

5. Keeping in view the rival averments made by the two parties, we can frame the following issues requiring consideration ;

A. Whether the petitioner had performed the duties of a Surveyor and should therefore be paid same salary as payable to a Surveyor.

B. Whether the impugned advertisement dated 12.7.1988 can be challenged on the ground that the same is discriminatory against the daily rated employees.

C. Whether the petitioner has acquired right to be regularised in service.

6. We have heard the learned counsel for both the parties and carefully perused the records.

7. With regard to the issue framed at 'A' of para 5, while the first part of the question raised is a question of fact, the second part is a question of law. ^{the position relating to the} The question of law is quite clear since the principle of "equal pay for equal work" has been unambiguously enunciated by the Supreme Court. The applicant himself cited in the O.A. the decision of the Supreme Court in the case of Daily Rated Casual Labour employed under Posts and Telegraphs Department versus Union of India & Others(A.I.R. 1987 S.C. page 2342) in which it has

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been held that the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres is not tenable. The reference can also be made in this regard to the decision of Supreme Court in the Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, Petitioners V. State of Karnataka and others etc., Respondents (AIR 1990 Supreme Court 883). In that case, making a reference to a number of decided cases like, Randhir Singh Vs. Union of India (1982) 1 SCC 618 : (AIR 1982 SC 879), Dharendra Chamoli Vs. State of U.P. (1986) 1 SCC 637, Surinder Singh Vs. Engineer-in-Chief, C.P.W.D. (1986) 1 SCC 639, R.D. Gupta Versus Lt. Governor, Delhi Admh. (1987) 4 SCC 505 : (AIR 1987 SC 2086), the Court observed as follows;

"We have referred to several precedents all rendered within the current decade to emphasise upon the feature that equal pay for equal work and providing security for service for regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity."

8. There is, therefore, no room for doubt that in case the petitioner has actually been made to work as surveyor, by the principle of

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surveyor, by the principle of "equal pay for equal work," he ought to have been given salary atleast at the minimum of the pay scale of regular surveyor but whether or not he should be paid as such would depend on question of fact i.e. whether or not he really worked as a surveyor. The facts which we have gleaned from the averments made in the petition and the Counter-reply and also the arguments advanced by the learned counsel for both the parties do not help us in arriving at a definitive conclusion on this issue. The position has been further confused by apparently contradictory statement made by the respondents in various Counter-replies as regard the designation of the petitioner. While in para 3 of the Counter-affidavit affirmed on 03.2.1989 in reply to a Misc.Application filed by the applicant, the respondents have stated that there is no post like "Assistant Surveyor", in para 3-D of the Counter-reply to the main petition, it has been stated that the petitioner was engaged as "Assistant to Surveyor" among various other designations. On the other hand from the annexures at 11 to 15 annexed to the Counter-reply^u, would appear that the petitioner has worked as Drawing Assistant (Tracer), highly skilled man for tracing the ^{sit} site plan, highly skilled man and tracer from time to time. The only document which the applicant has been ^{able} apply to produce in support as his claim that he worked as a Surveyor is ^acertified^u at Annexure-3 to the application given by Deputy Supdt. Archaeologist. This certificate states that the applicant has worked as Survey Assistant. We are, therefore, unable to come to any definitive conclusion as ^{to whether} the applicant actually worked as surveyor or not.

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9. So far as the impugned advertisement dated 12.7.1988 concerned, the offending clause reads as follows

"No applications from daily wages/Muster Roll Employees will be entertained since they cannot be treated as departmental candidates"

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The careful reading of the impugned document would indicated that the same is meant for circulation of a vacancy to be filled by direct recruitment and it was intended to obtain the applications of suitable candidate working in the various organisations which were the addressees of the impugned document. This circular clearly stipulates that daily wages/Muster Roll Employee cannot apply in response to this circular as they ^{can} ^{be} have not ^{be} treated as departmental candidates

10. We have given our careful consideration to the offending portion of this circular, No reason has been given as to why the daily wages/Master Roll Employee shall not be considered as departmental candidates. There is no ^{denying} ~~denying~~ of the fact that such employees are working in the department, though may not be in regular capacity. We donot find any rationale for a classification of daily wages/Muster Roll Employee as extra-departmentals. In the absence of ^{any rationale for} such classification, the offending clause must be held discriminatory and there ^{fore} ~~fore~~ struck down.

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11. This leads us to the consideration of the last issue relating to the petitioner's claim for regularisation in service. Here again there are divergent versions in the Counter-replies regarding the number of days petitioner has worked. In para 3-c of the Counter-reply to the main petition the respondents have avered that the petitioner has worked in 1984-85 for 59 days, in 1985-86 for 103 days and in 1986-87 for 116 days. On the other hand in para 4 of the affidavit affirmed by the respondents on 28.10.88 it has been stated that the petitioner has worked in 1984-85 for 59 days, in 1985-86 for 103 days and in 1985-86 for 147½ days and in 1986-87 for 116 days. If, this versions is accepted, the petitioner would have worked for 250½ days in 1985-86. The question is whether the working for more than 240 days in a year i.e. 1985-86 would entitle the petitioner for regularisation in service. The respondents do not have any separate scheme for regularisation of service of Casual Labour like in Railways and P & T. In the absence of separate scheme, the scheme formulated by the Department of Personnel in their office memorandum no. 49014/19/84-ESTT(C) dated 26.10.1984 would be applicable in this case. In terms of this scheme a Casual Labour who has put in atleast 240 days of service as Casual Labourer (including broken period of the service), during each of two years shall be eligible for such regularisation provided they have been employed through employment exchange. A one-time exemption from the requirement

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of being sponsored by the employment exchange was given by the Department of Personnel O.M. no.49014/ - 18/84-ESTT(C), dated 07.5.1985. This exemption should be applicable to the petitioner since his appointment was prior to the date of issue of this O.M. However from the facts of the case, it appears that the petitioner has not completed 240 days in each of two years. He has not, therefore, acquired the right to be regularised in terms of the Department of Personnel's scheme formulated in O.M. dated 26.10.84. He however has a right to continue as a Casual Labourer as long as there is a need for employing Casual Labourers in the department and in this regard he will have a preference over those who are junior to him by the date of recruitment and by so continuing to work if he completes 240 days or more in two years, he will acquire the right of regularisation in service.

12. In view of foregoing discussions, we pass the following order/directions;

1. The clause in the impugned circular dated 12.7.1988 which states that no application from daily wages/Muster Roll Employee will be entertained since they cannot be treated as departmental candidates is struck down. While we do not want to quash any selection which has already been finalised in pursuance of impugned circular dated 12.7.1988, we direct the respondents that for any future vacancy of Surveyor the petitioner's application shall be entertained and he shall be treated...

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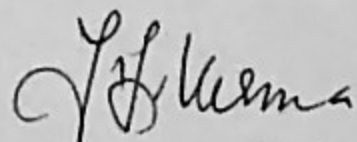
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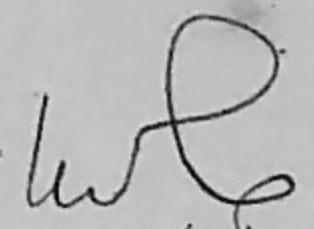


as a departmental candidates and be entitled to all benefits available to departmental candidates. This will however be subject to the condition that he fulfils the qualification required for the post.

2. The petitioner shall be allowed to work as Casual Worker so long as the department requires the services of casual workers and in this regard he shall have preference to those who are junior to him by the date of recruitment.

13. The petition is disposed of with the above order/directions. There will be no order as to costs.


Member (J)


Member (A)

Allahabad, Dated 24 February, 1994

/M.M./