

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH

ALLWIRKUNG

DATED: THIS THE 20TH DAY OF MAY, 1997

Hon'ble Mr. T. L. Verma JM
Coram : Hon'ble Mr. D. S. Baweja AM

SEARCHED.....APPLICANT NO. 387/92

C/A Sri Rakesh Verma

Versus

C/R Sri S. S. Singh

OPAL (ORAL)

BY HON'BLE J.R T.L.VERMA JM

The subject matter of challenge in this O.A. are the orders dated 53.1.1992 and 27.2.1992 whereby the applicant was asked to appear at the examination for appointment on regular post of Draftsman (Civil) grade III. The applicant has prayed that the aforesaid orders be quashed and the respondents be directed to regularise the services of the applicant on the post of Draftsman and post him as Draftsman grade III with all consequential benefits.

2. The facts giving rise to this application are that the applicant was initially appointed as Draftsman (Civil) by the Executive Engineer, Central Public Works Department (C.P.W.D. for short) Bareilly on 18.2.1987 on daily wage basis. He has been working on the said post since then to the satisfaction of all concerned. It is said that on 17.4.1989, the Executive Engineer refused to give work to the applicant on the ground that the services of the applicant were no more required in the department as there is no vacancy of Draftsman (Civil). The further case of the applicant is that in April, 1989 his services were accordingly terminated on 17.4.1989 (annexure A-1). The applicant challenged the termination of his services by filing O.A. 37/90. The said O.A. was allowed in part and the respondents were directed to consider the applicant for appointment as daily rated worker on the post of Draftsman according to rules as and when further vacancy arises hereinafter.

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3. After the aforesaid judgment was rendered applicant submitted a number of representations for his appointment, which failed to evoke any response from the respondents. However, sometime thereafter the respondents, by letter dated 7.1.1992 allowed the applicant to join duty on daily wage basis as Draftsman (Civil) grade III on the same terms and conditions on which he was initially appointed. The applicant after re-engagement as Draftsman on daily rate basis was informed about holding of examination for appointment on regular basis on the post of Draftsman by notification dated 13.10.1990. 22 vacancies of Draftsman were notified and eligible candidates including the applicant were directed to submit their application forms for appointment on the said post. The applicant was permitted by the department to appear in the said examination. He, however, choose to file this application, challenging the validity of the notification inviting applications for appointment on regular basis instead of appearing at the test.

4. The respondents have contested the claim of the applicant. In the C.A. filed on behalf of the respondents, it has been stated that the appointment on the post of Draftsman is made by Staff Selection Commission by holding competitive examination. The applicant, though was given permission to appear in the examination, did not appear in the said examination and all the vacant posts of Draftsmen have since been filled. There is no provision either in the rules or instructions issued in that behalf as may provide regularisation of services of the daily rated casual Draftsman without selection by the Staff Selection Commission.

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

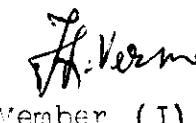
6. The averments made in the O.M. as well as in the R.W. do not indicate whether the applicant had at any stage cleared the required test for appointment on the said post of Draftsman Grade III. The learned counsel for the applicant also failed to bring to our notice any scheme prepared by the Government of India providing for regularisation of services on group 'C' post. The learned counsel for the applicant, however, referred to standing order dated 19.11.1985 and 25.3.1980 through which daily wage workers of the department, who have put in minimum 6 months continuous services are required to be regularised and the benefit of regularisation is to be given to such staff. Order dated 19.11.1985 may be seen at annexure A-15 and annexure A-16. These orders have been issued by the Construction Directorate of C.P.W.D. By these letters, guidelines have been issued for creation of posts where further recruitments have been stopped. The learned counsel for the applicant has also not disputed that the appointment on the post of Draftsman, which is a group 'C' post is made by Staff Selection Commission. Thus the instructions contained in annexure A-15 and Annexure A-16 are only indicative of the fact that these instructions are relevant for regularisation of casual labour only and that it has no application to the appointment on group 'C' post. That apart selection and appointment of group 'C' posts are made by the Staff Selection Commission pursuant to the recruitment rules. Annexure A-15 and Annexure A-16 are only administrative directions. The departmental

Directions cannot over-ride the provision of statutory rules. Therefore, requirement for clearing selection to a group 'C' post through Staff Selection Commission cannot be substituted by the directions relied upon by the learned counsel for the applicant.

7. In the facts and circumstances of the case discussed above, we are satisfied that the applicant who has not passed the required examination for appointment on the post of Draftsman 'Civil' grade III has acquired any right by mere working as daily worker on daily rate basis for being regularised as Draftsman. That being so, we find no merit in this application and the same is dismissed, leaving the parties to bear their own costs.

8. We would, however, like to mention that the applicant, who has already put in a number of years on the post of Draftsman grade III, has a right to be considered for appointment on the said post in accordance with law. Respondents are, therefore, advised to allow the applicant to appear in future selections, if necessary by relaxing the upper age limit. Interim order which was in operation till today is vacated.


Member (S)


Member (J)