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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 934 of 1993

Allahabad this the 30th day of November 1994

Hon'ble Mr. S. Das Gupta, Member(A)
Hon'ble Mr. T.L. Verma, Member(J)

Subhash Chandra S/o Late Shri Phool Singh
aged about 27 years R/o behind Railway Colony
Bijnor Distt, Bijnor.

Applicant

By Advocate Shri O.P. Gupta

Versus

1. Supdt. of Post Offices, Bijnor Division,
Bijnor.
2. Post Master General, Dehradun.
3. Union of India through Secretary Ministry of
Communication, Govt of India, New Delhi.

Respondents

By Advocate Shri ~~S.C. Tripathi~~ C.S. Singh

O R D E R

By Hon'ble Mr. T.L. Verma, Member(J)

This application under Section 19
of the Administrative Tribunals Act, 1985 has been
filed for ~~issue~~ a direction to the respondents to
treat the applicant in continuous service w.e.f.
19.5.1990 and to regularise him as regular Group-D
employee and employ ~~him~~ him as Night Chowkidar in the
alternative on any other post for which he may be
found fit.

2. The facts of the case in short are
that one Shri Indra Pal Singh, who was working on
the post of Night Chowkidar, was promoted on the post
of Wireman w.e.f. 19.5.1990 and the applicant was
engaged on the post of Chowkidar vacated by him.
The appointment of the said Indra Pal Singh was

cancelled by order dated 03.7.1992 treating the same as a regular. Consequent upon the reversion of Indra Pal Singh to the post of Night Chowkidar, the applicant was relieved from the post of Night Chowkidar w.e.f. 15.4.1993 by the impugned order.

3. The order of reversion of Indra Pal Singh to the post of Night Chowkidar was challenged before this Tribunal in O.A. No. 914 of 1992. The Tribunal, by its order dated 15.10.1992 quashed the impugned order with a direction to the respondents to consider the case of the applicant Indra Pal Singh for regularisation and in case he cannot be regularised on the post of Waterman, to send him back to his original post of C.P. Chowkidar. The respondents have, by order dated 06.4.93 reverted Indra Pal Singh back to the post of Night Chowkidar and relieved the applicant of the said post.

4. It is stated that although Shri Indra Pal Singh has not joined the post of Night Chowkidar, the applicant has been relieved from the said post and one Shri Harjeet Singh, Waterman, has been asked to perform the duty in place of the applicant. The applicant made a representation against his disengagement but, the said representation has not yet been decided, hence this application has filed by the applicant for the relief claimed above.

5. The respondents have resisted the claim of the applicant. It has been submitted by the respondents that the applicant was engaged as C.P. Chowkidar

on the undertaking of Shri Indra Pal Singh, C.P. Chowkidar, Bijnor w.e.f. 19.4.1990. Shri Indra Pal Singh was reverted to the post of C.P. Chowkidar by the order of P.M.G., Dehradun. On the reversion of Shri Indra Pal Singh to the post of C.P. Chowkidar, the applicant who was appointed in his place temporarily had to vacate the post for him. The applicant, it is stated, has acquired no right to hold the post. This application, therefore, it is stated, is not maintainable.

6. We have heard the rival contention of the parties and perused the record.

7. There is no initial order of appointment of the applicant as C.P. Chowkidar. We have, therefore, no reason not to accept the contention of learned counsel for the respondents that the applicant was engaged temporarily as a Stop Gap Arrangement on the post of C.P. Chowkidar on the undertaking given by Indra Pal Singh. This contention find support from Annexure-3 whereby the applicant has been relieved of the post.

8. The learned counsel for the applicant vehemently argued that since the applicant has worked continuously for about 3 years, he will be deemed to have acquired temporary status. According to the instructions contained in letter no.45-95/87-SPB-I dated 12.4.1991, the 'temporary status' would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently

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employed.

employed and have rendered continuous service of at least one year; during the year they must have been engaged for a period of 240 days(206 days in the case of offices observing five days weeks.). In view of the fact that the applicant has worked for about 3 years he will be deemed to have acquired temporary status in terms of instructions issued under letter referred to above. Such of those, who acquire temporary status are entitled to be paid wages at daily rates on the basis of minimum of the pay scale for a regular 'D' officials including D.A., H.R.A., and C.C.A. They are also entitled for increment at the same rate as applicable to a Group 'D' employee would be taken into account for calculating permonth rate wages, after completion of one year of service from the date of conferment of temporary status. The conferment of the temporary status, however, does not confer right to automatic regularisation with the passage of time. The applicant, in that view of the matter, may have become entitle to the benefits as mentioned above by virtue of his having acquired temporary status but that by itself does not confer on him right to hold the post or to be regularised on the said post automatically.



9. In view of the conclusion arrived at above that the applicant was appointed as C.P. Chokidar in place of Shri Indra Pal Singh on ad-hoc basis as a Stop Gap Arrangement, he has to vacate

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the post on the reversion of the said Shri Indra Pal Singh to the post of C.P. Chowkidar. In addition to the above, according to the instruction of the Director General, Delhi and C.P.M.G., Lucknow letter no Rec./G-39/6/15 dated 22.3.1993, employment on casual basis against leave and any other vacancy is not permissible. There was no clear vacancy of C.P. Chowkidar available at the time of Shri Indra Pal Singh was reverted from the post of Wireman to the post of C.P. Chowkidar. That being so, the applicant could not have been to regularised against any post.

10. The appointment of the applicant

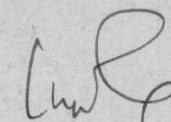
admittedly has not been made in the prescribed manner. It is also a admitted fact that candidature of the applicant had not been sponsored by the Employment Exchange. That being so, the mere fact that the applicant has worked for about 3 years on the post of C.P. Chowkidar as a Stop Gap Arrangement does not confer any right on the applicant either to continue on the said post or to ^{be} regularise on some other post of C.P. Chowkidar. In view of the foregoing discussions we are satisfied that the applicant is not entitled to be regularised on the post of C.P. Chowkidar which he was holding as a substitute for Shri Indra Pal Singh, temporarily promoted to the post of Wireman. In that view of the matter this application cannot be allowed and the same is accordingly dismissed. In view of the fact that

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the applicant has rendered -- about 3 years services as C.P. Chowkidar, we expect that the respondents will consider his case for re-engagement in case he is otherwise eligible for the same in accordance with law. There will be no order as to costs.



(T.L. Verma)
Member(J)



(S. Das Gupta)
Member(A)

/M.M./