

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice G.L.Gupta, Vice-Chairman
Hon'ble Mr. S.Biswas, Administrative Member

1. O.A. 651 of 1996

1. Ashok Baidya
2. Mohan Mondal
3. Ram Prasad Pradhan
4. Laxman Mondal

2. O.a. 725 of 1996

1. Gopal Das
2. Hriday Narayan Jha

VS

1. Union of India through the
Secretary, M/o Home, Govt. of India,
North Block, New Delhi-110 001
2. Director of Intelligence bureau,
M/o Home Affairs, North Block,
New Delhi-110 001
3. Deputy Director,
Subsidiary Intelligence Bureau,
9/1, Gariahat Road, Calcutta-19

..... Respondents

For the applicants : Mr. S.K.Ghosh, Counsel

For the respondents : Mrs. Uma Sanyal, Counsel

Date of order : 02.5.2002

O R D E R

Per Justice G.L.Gupta, V.C.:

Applicants in both the OAs allege that they had been given engagement as casual Drivers in the office of Deputy Director, Subsidiary Intelligence Bureau (in short SIB), Calcutta on 16.6.86. Initially, they were given gross salary of Rs. 900/- per month, but subsequently, the same was enhanced to Rs. 950/- per month and then to Rs. 1200/-, and 1500/- and finally Rs. 1800/per month. It is averred that the applicants discharged their duties and functions for about six months when they were given temporary identity cards, but no formal appointment order was issued in their favour. The applicants appeared before the Medical Board on 26.5.87 on the direction of the respondent authorities and they also underwent training pursuant to the memorandum dated 31.7.87. The applicants had been discharging



their duties faithfully for many years, but through an office memorandum dt. 24.2.89 (annexure-A3) they came to know that the authorities were going to fill up the vacancies to their exclusion. The applicants made request to the authorities to regularise them on the post of Drivers. As nothing was done, they filed OA No. 807 of 89 and OA 878 of 1994 before this Tribunal for redressal of their grievance. OA 807 of 89 was disposed of vide order dt. 2.5.95 whereas OA 878 of 94 was disposed of vide order dt. 5.7.95, whereby the respondents were directed to give regular pay scale to the applicants after giving them temporary status and regularise their services on the posts of Motor Transport Driver, if necessary by relaxing the recruitment rules or by creation of supernumerary posts.

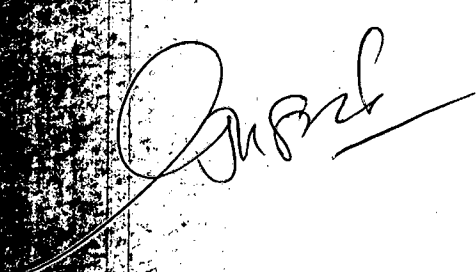
The said orders of the Tribunal came to be challenged before the Hon'ble Supreme Court in SLP No. (Civil) /95 (CC 4388) of 1995 { SLP (C) Nos. 22775 & 23859 of 1995}. The Hon'ble Supreme Court vide its order dt. 25.9.95 issued a stay order. The Appeals were ultimately disposed of vide order dt. 27.11.95. Their lordships held as follows :-

" Leave Granted.

The Tribunal has directed to regularise the services of the respondents who had initially been engaged as drivers and to pay the regular scale. This aspect of the matter has been examined by this Court in State of Haryana and Others -vs- Piara Singh and Others, {1992(4) SCC 118} and State of M.P. & Another -vs- Promod Bhartiya and Others, { 1993(1) SCC 539}. Accordingly, we set aside the impugned orders and direct that the cases of the respondents for regularisation and for fixation of pay scale be examined by the appellants in accordance with law specially in the light of the aforesaid judgements."

(emphasis supplied)

The applicants had filed CPC No. 154/95 in connection with OA 807/89, but the same was dismissed on 19.4.96 pursuant to the aforesaid decision of the Supreme Court.

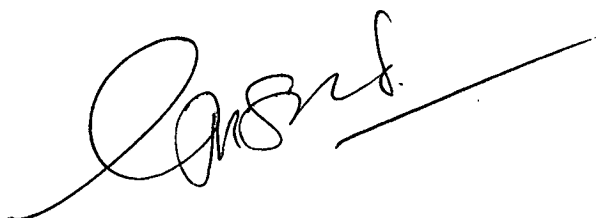


Now the applicants say that the respondents have not considered their case in terms of the directions of the Apex Court in the SLP, and therefore, they be directed to carry out the order of the Supreme Court by taking positive steps and to allow the applicants to discharge their duties and functions as Drivers.

2. In the separate replies filed in the OAs, the respondents' case is that the applicants had not been appointed on casual basis, but they had been engaged on "no work no wage" basis. It is stated that the engagement of the applicants in the capacity of Drivers under the organisation would be violative of the Apex Court's judgements in the cases of State of Haryana & Ors -vs- Piara Singh & Ors and State of M.P. & Anr. -vs- Pramod Bhartiya & Ors (supra). It is averred that the applicants are not qualified for appointment to the posts of Drivers, and therefore, they cannot be given appointment under the relevant recruitment rules.

3. In the supplementary affidavit filed by the applicants, it is stated that their cases ought to have been considered in the light of the decisions of the Hon'ble Supreme Court cited in the order dated 27.11.95 and further decisions in the cases of Rudra Kr. Sain -vs UOI & Ors, (JT 2000(9) 299 and Gujarat Agricultural University -vs- Rathod Labhur Bechar & Ors, { JT 2001(2) SC 16}. It is averred that the applicants have discharged their duties as drivers for the last 10 years and they have spoiled their life and would not get any employment elsewhere at this stage. It is stated that if the applicants are re-engaged and allowed to discharge duties attached to the post of drivers, they would not press for their regularisation.

4. In the supplementary reply dt. 27.6.2001, the facts stated in the original reply have been reiterated.



5. We have heard the learned counsel for the parties and perused the documents placed on record as also the decisions cited by the ld. counsel for the applicants.

6. Mr. Ghosh, ld. counsel for the applicants contended that the respondents have not passed any order as per directions given by the Hon'ble Apex Court in the order dt. 27.11.95, and therefore, a direction be given to the respondents to examine the cases of the applicants and to pass a speaking order. He pointed out that in view of the averments made in the reply, the applicants have stated in their supplementary affidavit that if they are re-engaged, they would not press for their regularisation, and therefore, the respondents should consider engagement of the applicants.

7. On the other hand, Mrs. Uma Sanyal, contended that there was no need of passing a speaking order in the matter and as the applicants did not furnish the required undertaking, they have not been reengaged. She contended that the applicants were engaged on "no work no wage" basis, and therefore, they did not have a right of regularisation, more so, when they are not qualified to become drivers under the relevant recruitment rules.

8. We have given the matter our anxious consideration. It is not in dispute that the applicants do not possess the qualification required as per rules for becoming Drivers in the office of the respondents. However, that does not decide the controversy.

9. Their lordships of the Hon'ble Supreme Court vide its order dt. 27.11.95, as quoted above, had directed the respondents herein to consider the cases of the applicants for regularisation and for fixation of pay scale in accordance with law, specially in the light of the decisions in the cases of Piara Singh and Promod Bhartiya (supras). It is true that no direction was given to the respondents



to pass a speaking order, but when their lordships had directed to examine the cases of the applicants, it was implicit that the respondents on examining the matter, would pass an order, accepting or rejecting the claim of the applicants for regularisation. But this has not been done. Instead the respondents state that the applicants being not qualified to become drivers, are not entitled to regularisation. It may be that the applicants may not be qualified for regularisation, yet it was necessary to examine their cases and pass an order keeping in view the directions of the Supreme Court referred to above.

10. It is significant to point out that according to the respondents themselves, they did not want to dispense with the services of the applicants, but as the applicants did not agree to furnish undertaking surrendering their claim for regularisation on the post, they have not been allowed to perform their duties. In the supplementary affidavit, the applicants have stated that if they are engaged as drivers, they will not press for their regularisation. In other words, the applicants are ready to furnish the undertaking.

11. Keeping in view the above facts and circumstances, we think it proper to direct the respondents to examine the cases of the applicants afresh in the light of the directions of the Supreme Court and the averments made at para No. 14 of the reply and para No. 8 of the supplementary affidavit of the applicants dt. 14.3.2001, and pass appropriate order. This exercise be completed within a period of two months from the date of communication of this order.

12. Both the OAs stand disposed of with the above observations.
No costs.


(S.BISWAS)

MEMBER(A)


(G.L.GUPTA)

VICE CHAIRMAN