

I/7  
2/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 16/2003  
~~P.A. No.~~ with  
M.A. No. 18/2003

198

26.3.2004

DATE OF DECISION 26.3.2004

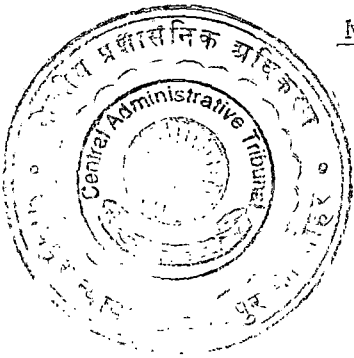
Gokul Narayan Petitioner

Mr. S.K. Malik Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Mr. Kamal Dave Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. G.R. Patwardhan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *W*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

( G.R. Patwardhan )  
Adm. Member

( J.K. Kaushik )  
Judl. Member

...

#18  
2/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 16/2003**

**WITH**

**Miscellaneous Application No. 18/2003**

Date of decision: 26-3-2004

dh

**CORAM:**

**Hon'ble Mr. J. K. Kaushik, Judicial Member**

**Hon'ble Mr. G.R. Patwardhan, Administrative Member**

Gokul Narayan S/o Shri Harji Ram aged about 42 years, R/o A-170 Gandhi Colony, Baldev Nagar, Masuria, Jodhpur (Rajasthan).

Presently working on the post of Groundman at Sports Authority of India (SAI), Sports Training Centre, Barkatula Khan Stadium, Jodhpur (Raj.).

...Applicant

(Rep. By Advocate Mr. S.K. Malik, for applicant)

**V e r s u s**

- (1) Union of India through Secretary, Ministry of Sports, Shastri Bhawan, New Delhi.
- (2) Director General Sports Authority of India (SAI), Jawahar Lal Nehru Stadium, New Delhi.
- (3) Director Sports Authority of India, Netaji Subhash Western Centre Sports Complex, Sector 15, Gandhi Nagar (Gujarat).

.....Respondents.

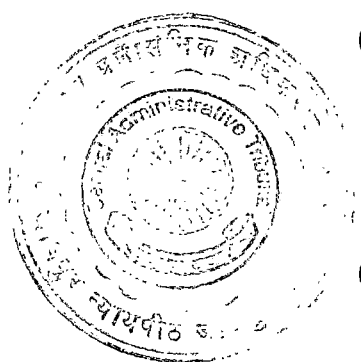
(Rep. By Advocate Mr. Kamal Dave, for respondents)

**O R D E R**

**PER J.K. KAUSHIK, JUDICIAL MEMBER**

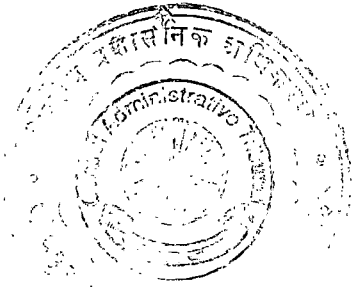
Shri Gokul Narayan has filed this Original Application under Section 19 of Administrative Tribunals Act, 1985 and has, inter alia, challenged order dated 5.8.2002 (Annexure A/1) with further direction to the respondents to regularise the services of the applicant from 26.11.82 and payment of difference of pay thereof alongwith interest @ 12 % p.a.

dh



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27/12

2. Shorn of superfluities, the indubitable facts as enunciated in the pleadings of this case are that the applicant was initially appointed as Watchman on daily wages basis on dated 26.11.1982. His case was recommended for regularisation vide communication-dated 6.7.88 (Annexure A/2). He came to be allowed temporary appointment w.e.f. 1.9.89, vide order-dated 28.03.90. One Shri Hoshiyar Singh was also was given a temporary appointment alongwith the applicant through the same order.



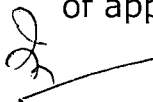
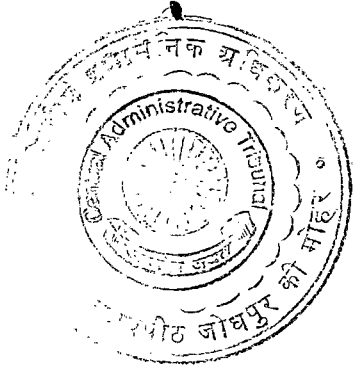
3. One Shri Jagdish Prasad Rai who was also engaged on daily wages basis was regularised as an Attendant w.e.f. 10.8.85 from the date of his initial appointment, vide communication dated 24.8.93 ( Annexure A/6) in pursuance with the order dated 17-1-1992 passed by Delhi High Court in his writ petition. Shri Hoshiyar Singh who was given temporary appointment as indicated above, also filed a SB Civil Writ Petition before Rajasthan High Court at Jaipur for grant of wages in the minimum of the pay scale for the post of Waiter which came to be accepted vide order dated 31.8.89 (A/3). Ha was regularised with effect from the date of his initial appointment i.e. from 29.1.87 vide communication dated 2.5.96 (Annexure A/9).

4. The applicant also filed an Original Application No. 233/2000 before this bench of the tribunal for preponing the date of his regularisation to that of his initial date of engagement. The same came to be disposed of vide order dated 27.11.2001 (Annexure /13) with a direction to the respondents to pass

appropriate speaking order after taking into consideration the relevant law and the cases of Shri Hoshiyar Singh and Jagdish Prasad Rai. Thereafter, the claim of the applicant was turned down vide impugned order dated 5.8.2002 (Annexure A/1).

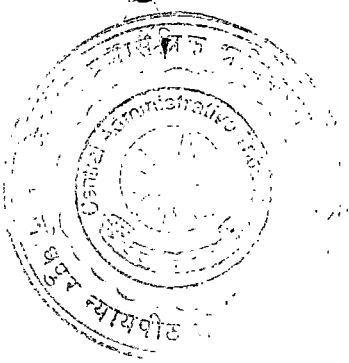
5. The impugned order has been assailed on the grounds of discrimination, arbitrariness, colourable exercise of power etc. Certain factual aspect has also been made the basis of challenge by showing the applicant was not only a similarly situated person but also having better qualification than the others who have been regularised from the date of their initial engagement.

6. Now advertent to the variance as indicated in the reply, it is averred that the applicant was appointed as watchman on 26.11.82 with the rowing centre at Jaipur. The said centre came under the control of Sports Authority of India only w.e.f. 30.5.87. The applicant was neither appointed against any vacant post nor after regular selection process and was not even sponsored through employment exchange. His name was recommended for regularisation but for want of vacancy could not be considered. On availability of vacancy he was appointed as Grounds man on regular basis w.e.f. 1.9.89. The cases of other two employees are distinguishable from that of the applicant who has put his claim after an inordinate delay and it would adversely affect the seniority of others. It is also enunciated that regularisation cannot be claimed from the date of appointment if the initial entry is not against a vacant post.

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7. In the reply, it has been further averred that Shri Hoshiyar Singh's case was recommended by a committee on 29.1.87 and he was given regular appointment as per the directions of Rajasthan High Court. Similarly, Shri Jagdish Prasad Rai was also regularised w.e.f. 10.8.85 in pursuance with directions of Delhi High Court. The case of Shri Jagdish Prasad Rai is otherwise different since he was appointed after following the RR and was not on daily wages basis.



8. The proceedings of the committee, which considered and recommended the case on Shri Hoshiyar Singh was directed to be produced, vide order sheet dated 21.9.2003 but same have been said to be as not traceable and an affidavit to this effect has been filed.

9. A Misc. Application No. 18/2003 has been filed for condonation of the delay in filing of the Original Application. It has been averred that date of regularisation of Shri Hoshiyar Singh, who came to be regularised along with the applicant, came to be changed from 1.9.89 to 29.1.87 vide letter dated 2.5.96. This fact came to the knowledge of the applicant in the month of January 2000 and he made a representation to the competent authority on dated 5.1.2000, for extending the same benefits to him. Finding no response, he took recourse to filing of Original Application No. 233/2000, in which a direction was given to the respondents to pass appropriate order and thereby the impugned order has been passed on 5.8.2002.

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10. The official respondents have filed a very detailed reply to the aforesaid MA. The law relating the limitations has also been elaborately pleaded and narrated. It is averred that final order came to be passed on 28.3.90 and Original Application has been filed in 2000. The same is barred by time. The applicant ought to have filed this application by 27.3.91. The representation dated 5.1.2000 does not fulfil the requirement of proper explanation. If such explanations are considered as proper that would keep open way for unsettling the settled matters.



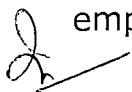
11. We have heard the elaborate arguments advanced by Mr. S K Malik and Mr. Kamal Dave, the learned counsel for applicant and respondents, respectively who have agreed for its final disposal at the stage of admission. We have carefully perused the pleadings and records of this case.

12. Mr. Malik has reiterated the pleadings of the applicant and has submitted that the applicant was initially appointed on an early date than that of Shri Jagdish Prasad Rai and Shri Hoshiyar Singh. His name was sponsored through employment exchange at the time of his initial engagement. His name was also recommended for regularisation as early as 1988 but he was not regularised for want of vacancies. On the other hand said Shri Jagdish Prasad Rai and Shri Hoshiyar Singh have been regularised vide orders passed on dated 24.8.93 and 2.5.96 and that too w.e.f. 10.8.85 and 29.1.87, respectively. Once there was no vacancy, how they were regularised from the date of their initial appointment. He has next contended that the said two persons were also appointed without following the RRs in the


similar way as that of applicant and the respondents have not placed any material to show any distinction in the mode of their appointment.

13. Mr. Malik has also contended that OSD Rowing Centre, Jaipur came under the control of SAI on 30.5.87 and the applicant as well as both Shri Jagdish Prasad Rai and Shri Hoshiyar Singh were appointed in the said Rowing Centre earlier to the said date. Once Shri Jagdish Prasad Rai and Shri Hoshiyar Singh have been regularised from a prior date of the control of SAI over the said centre, nothing prevented the respondents to give similar treatment to the applicant. The applicant was never appointed on ad hoc basis and his claim has been turned down on the wrong pretext/facts. He has also made us to travel through various documents to show that there was no direction for regularising Shri Hoshiyar Singh by the High Court of Rajasthan and respondents of their own has regularised him from a retrospective date. The applicant's case has been totally ignored. He has reiterated the grounds mentioned in the MA for condonation of delay. He has cited number of authority in support of his submissions but we do not consider referring to all of them because several authorities have been cited for the same proposition and some of them are totally irrelevant to the controversy involved here and we would be referring only some of them considered relevant.

14. Per contra, Mr. Dave has endeavoured hard to counter the submissions made on behalf of the applicant. He has emphasised that there is no good and sufficient reasons




warranting condonation of the delay. The Tribunal would not like to adjudicate upon the merits of the case unless the hurdle of the limitation is overcome. He has reiterated the defence of the respondents as set out in the reply. He has strenuously contended that the name of the applicant was not sponsored through employment exchange and his entry into service was a back door entry in as much as his appointment was not made as per RR. The regularisation can not be done except in accordance with the rules in force and that too against a clear vacancy which was not there.



15. Mr. Dave has next contended that Shri Jagdish Prasad Rai and Hoshiyar Singh have been regularised in pursuance with the court order and the applicant can not claim any benefits of the same. He emphasised that even if the said employees have been granted some wrong benefits, this Tribunal would not like to grant the same for the reason that it would tantamount to perpetuate the illegality. He has next submitted that the records relating to the report of committee which considered the case of Shri Hoshiyar Singh was not traceable. He has cited the decisions of Supreme Court in cases of State of Haryana Vs. Pyara Singh AIR 1992 SC 2130 and Ashwani Kumar & ors Vs. State of Bihar & ors JT 1997(1) SC 243, in support of his submissions. Hence the Original Application deserves to be dismissed.

16. We have considered the rival contentions put forward by the learned counsel for both the parties. Before grappling with the crux of the matter, we would deal the MA for condonation of the





delay. It is true that the initial cause of action arose to the applicant when he was regularised vide order dated 28.3.90. The cause of action, further, arose to him when Shri Hoshiyar Singh was regularised vide letter dated 2.5.96 from a retrospective date. The Original Application ought to have been filed at least by 2.5.97 but the same has been filed on 22.1.2003. Thus there is delay in filing of the same. The respondents have not denied that the applicant could have known the regularisation of Shri Hoshiyar Singh. It is also not indicated that any seniority list has been published in case of Group D posts. The applicant has filed an affidavit that he came to know only in the first week of Jan 2003 and we have no reason to disbelieve the same in absence of any evidence to the contrary. Otherwise also, the maximum possible unsettlement would be that of seniority of the applicant vis-à-vis (as we are not considering grant of any parity with Shri Jagdish Prasad), Shri Hoshiyar Singh. Firstly no seniority seems to have been yet published. Secondly, Shri Hoshiyar Singh is not yet promoted. In such situations, one could challenge the seniority at any time when one is adversely affected without limitation constraint and we are fortified of this view from a decision of the Apex Court in case of **Kuldeep Chand v. Union of India & ors SLJ 1996(1) SC page 113**. Therefore, by applying the beacon light of the decision of Supreme Court in case of **Collector Land Acquisition Anandnag and Anr. Vs. Mst Katiji and ors AIR 1987 Sc 1353**, we would like to condone the delay and decide the Original Application on merits by applying justice oriented approach. The delay is hereby condoned, accordingly. Hence the MA for condonation of delay stands accepted.

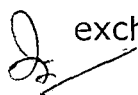


17. Now we would advert to the merits of the case. As far as the defence of the respondents that the applicant's name was not sponsored through employment exchange is concerned, firstly, the applicant has averred that his name was sponsored through employment exchange. Secondly, even if not, as early as 1985, an OM was issued on dated 7.5.1985 at page 226 of Establishment and Administration seventh Edn by M. Swamy, whereby it has been prescribed that persons engaged prior to issuance of the said OM were exempted from the requirement of sponsorship from employment exchange. We are equally unimpressed with the submission that the case of said persons were recommended for regularisation since the case of applicant was also recommended in similar way. Hence this ground falls on the ground and can not be sustained. We have not been shown as to how Shri Jagdish Prasad and Shri Hoshiyar Singh were appointed. It is not clear as to why the persons engaged subsequently were allowed regularisation ignoring the candidature of the applicant. Much emphasis has been laid on the point that there was no vacancy for regularisation of the applicant. It is difficult to understand as to how Shri Hoshiyar Singh was regularised without there being any vacancy. Mere perusal of the order passed by the High Court in respect of Shri Hoshiyar Singh reveals that there was no direction regarding regularisation and admittedly the respondents regularised Shri Hoshiyar Singh of their own. We are not persuaded with the submission of the learned counsel for the respondents on this point; rather we feel that their reply conceals more than what it reveals.



18. We are not aware of the complete facts regarding Shri Jagdish Prasad Rai as to under what circumstances he was ordered to be regularised from the date of his initial appointment by the High Court, Delhi. He was regularised on the post of Attendant and has been further promoted long back. Thus his case is distinguishable of facts and the applicant can not claim any parity with him. However, there was no such specific order in respect of Shri Hoshiyar Singh. It is also strange to notice that respondents have regularised the services of Shri Hoshiyar Singh from the date of his initial appointment despite there being doubts regarding availability of vacant on group D post and still they are striving hard to justify their wrong. One thing is very clear that the changing over the control of the Rowing Centre to SAI did not play any significant role and had the respondents been a little fair they would have not neglected the case of applicant for regularisation from a prior i.e. at least from the date his next junior Shri Hoshiyar Singh was regularised. Thus he has been discriminated in the matter of employment and there has been infraction of Article 14 of Constitution.

19. We have carried out an incisive analysis and find that one of the planks of defence of the respondent has been that the services of the applicant could not be regularised since he was not appointed against clear vacancy and his appointment was not according to rules. His case was also considered for regularisation the moment a vacancy became available. As we have said that he was not required to come through employment exchange and there is nothing on the records that Shri Hoshiyar



Singh got appointment after facing any selection; rather he is also the similarly situated person like that of applicant. The respondents have not enlightened us as to when a vacancy became available from back dated and why it was thought proper to regularise a junior to the applicant on that. In case there was no such vacancy and Shri Hoshiyar Singh has been still regularised against a non-existent vacancy, his very regularisation from the initial dated of appointment i.e. from 29.1.87 would be a nullity and non-est in the eye of law but this is not the case of any party.



20. Looking the case from yet another angle, from the para 4 of the reply, it can aptly be gathered that the regular vacancy became available only on 1.9.89 since the applicant was regularised as per the recommendations of OSD. The regularisation order is of 28.3.90 and this makes it evident that he was regularised alongwith Shri Hoshiyar when the vacancies became available. The inverse would be also true that there was no regular vacancy prior to 1.9.89. If that be so, the regularisation of Shri Hoshiyar Singh would be against a non-existent post and thus a nullity on the basis principle of regularisation which is also fortified by the decision in Ashwani Kumar's case supra, cited, and relied upon on behalf of the respondents. But as we have already said that such is not the plea of any party. The logical conclusion would be that there must have been a clear vacancy on which Shri Hoshiyar Singh has been regularised w.e.f. 29.1.87.

*[Signature]*

21. If the above proposition is true, then the case of the applicant would be of non-consideration of the applicant for regularisation against the vacancy available at least on 28.1.87. As per the settled law, one does not have any right for regularisation as such and one has only right to consideration for regularisation at par with his next junior and that too in accordance with the policy of regularisation. But this has not been done. We are of the firm opinion that the applicant was otherwise eligible for regularisation on the date when Shri Hoshiyar Singh was regularised. Since it has not been son done, there has been infringement of the fundamental right of the applicant as enshrined in Article 16 of the Constitution. Therefore to that extent there is force in this Original Application. The other decisions cited on behalf of the respondents also do not help them in view of aforesaid discussion.

22. We wish to deal yet another seminal point raised by Mr. Dave that even if the respondents have extended some wrong benefits to an employee, the tribunal would not extend such benefits to a similarly situated person since that would otherwise perpetuate the wrong and that can not be in furtherance of justice. As far as proposition of the law is concerned, there can be no doubt in it, and we are in full agreement with the same; rather the same is by now well settled by the Apex Court in catena of judgement and we refer to one of them for the reference i.e. State of Bihar v. Kameshwar Prasad Singh & ors. 2002(2) ATJ SC 614. But it is not the case of any of the party that Shri Hoshiyar Singh was wrongly allowed the regularisation

from 29.1.87 and therefore the said proposition has no application to the instant case and the respondents can not get any support from the same. We are afraid, the learned counsel for the respondents has been labouring hard under a misconception and we find unable to persuade ourselves with the submissions of Mr. Dave and have no option except to reject the contention altogether being irrelevant.



23. In the backdrop of the above analysis, the factual and legal position which has come to be crystalised, we find ample force in this Original Application and the <sup>same is</sup> stands allowed in part. The impugned order dated 5.8.2002 (Annex. A/1) stands quashed. The respondents are directed to treat the date of regularisation of the applicant on group D post as 29.1.87 instead of 1.9.89 and he shall be entitled for all the consequential benefits at par with Shri Hoshiyar Singh except that the monetary effect will be from the date of filing of this Original Application. Costs made easy.

( G.R. Patwardhan )  
Administrative Member

( J.K. Kaushik )  
Judicial Member

Kumawat

P/P  
11/4/2013  
D. K. S. S.

RIC

Amil Kumar (R.M.)  
11/4/04

for - Kamal Dake  
Adm.

Part II and III destroyed  
in my presence on 23/10/13  
under the supervision of  
section officer (I) as per  
order dated 18/10/13

S.R. Sharma  
23.10.2013  
Section officer (Record)