

क.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 71/2006
WITH
MISC. APPLICATION NO. 39/2006
AND
ORIGINAL APPLICATION NO. 72/2006
WITH
MISC. APPLICATION NO. 40/2006**

Date of order: 28.10.2009

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

(1). O.A. NO. 71/2006

Shri Babu Lal S/o Shri Bagta Ram Ji, aged about 25 years, by caste Vishnoi, at present resident of Main Gate, Vyas Colony, Jodhpur, presently working as Chowkidar at Air force Station, Jodhpur.

:Applicant.

Mr. Manoj Bhandari, counsel for applicant.

VERSUS

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Air Officer Commanding, 32 Wing, Air Force Station, C/o 56 A.P.O.
3. The Station Secretary Officer, 32 Wing, Air Force Station, C/o 56 A.P.O.
4. The Chief Administrative Officer, 32 Wing, Air Force, Ratanada.

... Respondents.

Mr. Kuldeep Mathur, counsel for respondents.

*COMPARED &
CHECKED*

31

-2-

(2). O.A. NO. 72/2006

1. Manak Chand S/o Shri Jetha Ram, aged about 23 years (approximately), by caste Harizan (SC), at present residing at Maderna Colony, Jodhpur, presently working as Chowkidar at Air Force Station, Jodhpur.
2. Shri Babu Ram S/o Shri Dharma Ram, aged about 27 years, by caste Vishnoi at present residing at Main Gate, Vyas Colony, Jodhpur, presently working as Chowkidar at Air Force Station, Jodhpur.

:Applicants.

Mr. Manoj Bhandari, counsel for applicants.

VERSUS

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Air Officer Commanding, 32 Wing, Air Force Station, C/o 56 A.P.O.
3. The Station Secretary Officer, 32 Wing, Air Force Station, C/o 56 A.P.O.
4. The Chief Administrative Officer, 32 Wing, Air Force, Ratanada.

Respondents.

Mr. Kuldeep Mathur, counsel for respondents.

ORDER**Per Hon'ble Dr. K.S. Sugathan, Administrative Member**

The issue involved in both these Original Applications are identical. Therefore, both the OAs are decided through this common judgment.

2. The applicants in these OAs are working as Watchmen in the respondent's organisation. They were engaged on different

dates in the year 2001 and have been working as watchmen since then. The applicants are seeking a direction to grant them regular pay scale of watchman or at least the minimum of the pay scale. Though no appointment order has been issued to them, they were given temporary passes to attend to their duties. They are engaged for security duties in the domestic area and are paid an honorarium of Rs.1500/- per month for discharging the duties of watchmen. As per the respondents' reply, the applicants are part time watchmen and are being given an honorarium of Rs. 1500/- per month from Non-Public Fund. The respondents have also contended that the applicants are also working as bus attendants on a part time basis for which they are paid an honorarium of Rs. 1400/- per month and that both the honorariums put together they get Rs.2900/- per month which is higher than the minimum wages. However, this is strongly refuted by the applicants in their rejoinder. The applicants have submitted in the rejoinder that they worked as bus attendants only initially for a certain period in the year 2001. At present, they are working only as full-time watchmen in a shift of 8 hours and are paid an honorarium of Rs.1800/- per month. The applicants have prayed for the following relief:

"1. by an appropriate order or direction, the Respondents be directed to regularise the services of the applicant on the post of Watchman against the vacant post existing in the respondent department or may arise in future or may regularise him against any other class-IV post existing in the respondent department looking to his experience and qualification.

2. by an appropriate order or direction, the respondents be directed to grant at least minimum of pay scale of the

post of Watchman i.e. 2550-3200 w.e.f. July, 2001 with all consequential benefits including the arrears of salary.

3. by an appropriate order or direction, the respondents be restrain to terminate the services of the applicant during the pendency of the original application.

4. by an appropriate writ, order or direction, the salary undertaken by the Respondents against Class-IV Post in pursuance of the Advertisement dated 14-20 Jan., 2006 may kindly be declared illegal and be set aside.

5. Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

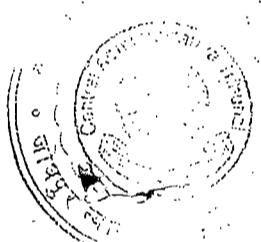
3. The respondents have contested the prayer. It is their contention that the applicants were initially engaged as a part time school bus attendant in 1999/2000 on a fixed honorarium of Rs. 800/- per month, paid from Non-Public Fund. The honorarium was subsequently increased and since 2005 they are getting Rs. 1400/- per month for working as a part time bus attendant. In addition they are also paid an honorarium of Rs. 1500/- per month for the part time work of private watchmen in the domestic area. The certificate of experience and character issued to them are in the private capacity of issuing officials. The Non Public Fund is created out of the contribution of the uniformed personnel for their welfare activities. There is no policy for regularisation of part time workers paid out of non-public fund. Such workers are entitled to compete for any post released for recruitment. The pay scale of watchman appointed through regular process of selection is Rs.2550-3200 but it is not applicable to the part

JJ

time private watchmen. The applicants applied for a class IV post, but they did not qualify in the written test. There is no provision for automatic regularisation. The honorarium paid is much more than the minimum wages. There is no violation of the Article 14 and 16 of the Constitution.

4. The applicants have filed a rejoinder. It is reiterated in the rejoinder that the applicants are working on a full-time basis in a shift of 8 hours. That a Scheme of conferring temporary status to casual labourers was introduced in the year 1993 (A/11) under which temporary status would be conferred without reference to the availability of Group D posts. The applicants who have been working for the last 6 years are entitled to be conferred temporary status under the said Scheme and also entitled to the minimum of the pay scale. The applicants are not getting Rs.2900/- per month as claimed by the respondents. They are not now discharging the duties of bus attendant as claimed by the respondents. The applicants are not being paid a wage equivalent to the minimum wage. The Hon'ble High Court of Rajasthan has upheld the decision of this Tribunal in OA No. 184/04 for protecting the services of a sweeper. There is violation of Article 14 and 16 of the Constitution of India as the applicants are discharging the same duties as regular watchmen.

5. We have heard the learned counsel for the applicants Shri Manoj Bhandari and the learned counsel for the respondents



Shri Kuldeep Mathur. We have also perused the records carefully.

6. The Misc. Applications No. 39 of 2006 and 40 of 2006 filed by the applicants for condonation of delay are allowed and delay is condoned.

7. There are four issues for consideration in these Original Applications, namely:

- (i) whether the applicants are entitled for regularisation as watchmen;
- (ii) whether the applicants are entitled for temporary status under the 1993 Scheme and by virtue of that to the minimum of the pay scale of watchman;
- (iii) whether the applicants are working on a full-time basis;
- and
- (iv) whether the applicants are entitled to get the benefit of the principle of equal pay for equal work;

We shall presently take the first issue, namely whether the applicants are entitled to regularisation. In the matter between **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others** – 2006 SCC (L&S) 753, the Hon'ble Supreme Court has laid the law on this issue. The following extract from para 43 of the said judgment is relevant:

"43. XXXXX Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely

- 7 -

because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. XXXXX"

The applicants were not recruited after a due selection of process. No appointment orders were issued to them. They were only engaged on a fixed monthly honorarium. They are also not covered by any scheme of regularisation formulated by the respondents. In view of the law laid down by the Hon'ble Supreme Court in **Umadevi** case, we do not see any merit in the claim of the applicants for regularisation. In OA No. 184/04 relied on by the applicants the decision of this Tribunal was to treat the applicant as a full-time casual labourer instead of a part-time casual labourer. There was no direction for regularisation.

The second issue is the claim for conferment of temporary status under the 1993 Scheme introduced by O.M. dated 10.09.1993 (A/11). It is stated in the said Scheme that:

4. Temporary Status

(i). Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continues service of at least one year which means that they must have been engaged for a period of at least 240 days in the case of offices observing 5 days week." (emphasis added)

- 6 -

The aforesaid Scheme is applicable to only those casual labourers who were in service on the date of issue of the said O.M. The applicants were engaged in the year 1999/2000. They were not casual labourers on the date of issue of the said O.M. We are, therefore, unable to accept the contention of the applicants that they are entitled to be conferred temporary status under the said Scheme of 1993. We now turn to the claim for minimum of the pay scale. The Scheme of 1993 provides for payment of daily rates with reference to the minimum of the pay scales of the corresponding pay scale only to those casual labourers who are conferred temporary status under the Scheme. As the applicants are not entitled to be conferred temporary status under the Scheme, the claim of the applicants for payment of the minimum of the pay scale also cannot be sustained.

We now come to the third issue whether the applicant are working on a full-time basis. The respondents have stated the applicants are part time employees, whereas the applicants claim that they are engaged on a full-time basis. We have perused the available record carefully to enable us to record a finding on this issue. Some of the letters issued by the officials of the respondent's organisation for payment of wages to the applicants are available at A/2 (pages 21 to 25). These letters describe the applicants as temporary watchmen. The payment recommended is also shown as monthly remuneration. There is no mention in the said letters that the applicants are part time

J21

employees. There is also no mention about the number of hours worked. If the applicants were indeed part time employees, this vital information about their employment would certainly have been mentioned in the aforesaid documents. Further, there is a certificate issued by the Station Security officer at A/3 which says that the applicants are working as temporary watchmen regularly. There is no mention in the certificate that they are part-time workers. The respondents have also not refuted the contention of the applicants in their rejoinder that they are working on 8-hour shift. All these evidence indicates clearly that the applicants are engaged on a full-time basis. We have therefore no hesitation in concluding that the applicants are engaged on a full-time basis.

We now come to the last issue, namely whether the applicants are entitled to the benefit of the principle of equal pay for equal work. The applicants have refuted the contention of the respondents that they are paid Rs.2900/- per month. According to the applicants they are being paid only Rs.1800/- for the work of watchmen. The counsel for the applicants has relied on the following citations:

- 1) 2008 (1)SCC 586;
- 2) 2003 (1) SCC 250
- 3) 1996 (11)SCC 77
- 4) 1995 (3)WLC(RAJ) 300,362.

—10—

In citation at serial No.1 above, the Hon'ble Supreme Court has dealt with the issue of parity of pay scales in respect of radio mechanics in Assam Rifles vis-à-vis radio mechanics in other paramilitary forces. The radio mechanics of Assam Rifles and other paramilitary forces were regularly recruited employees and discharged similar functions; but an anomaly in the pay scales was being continued on account of some revision of the pay scales in some paramilitary forces. The apex Court held that the continuation of such anomaly, when it is established that the duties and responsibilities are identical is irrational and arbitrary. The apex Court also made an observation that "having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16 in service jurisprudence, the doctrine of "equal pay for equal for work" has assumed status of a fundamental right".

In the citation at serial No.2 above, the issue was whether the daily wage workers should be paid wages equivalent to the pay given to the regularly employed staff. It was held by the Hon'ble Apex Court that the applicability of the principle of equal pay for equal work depends not only the nature and volume of work but also on the qualitative difference in reliability and responsibilities as well. The Hon'ble Supreme Court set aside the orders of the High Court in so far as the pay equal to that of the regular employed staff has been ordered to be given to the NMR/daily wager/casual workers. It was also

23

held that such daily wage workers should be paid at the rates of minimum wages prescribed.

In the citation at serial No.3 the Hon'ble Supreme held that pump operators employed on daily wages by the State of Haryana were not entitled to parity in pay with regular workmen; that they can get the minimum wages. This is similar to the finding of the apex Court in the citation at serial No.2 above.

The citation at serial No.4 above involves the regularisation of class IV employee in the post of pump-driver on the ground that he was actually working as a pump driver for many years. The facts are of this case are entirely different compared the facts of the applicants in these OAs.

8. Having perused the citations as well as the material on record, we are of the considered view that the facts of this case are similar to the case decided by the Hon'ble Supreme Court in citation No.2 referred to above. The applicants are not holding a regular post of watchmen, unlike the radio mechanics of Assam Rifles. This is not a case where one group of regularly recruited staff are given a different pay scale compared to another group of regularly recruited staff. This is a case where temporary employees getting monthly fixed remuneration are seeking parity with regularly appointed employees. Therefore

the ruling in the citation No.1 cannot be made applicable to this case. On the other hand the status of the applicants are akin to that of a daily rated workers, who according to the Hon'ble apex Court, as per citation No. 2 and 3 referred to above are entitled to only the equivalent of minimum wages. The next question that arises is whether the applicants are actually getting remuneration that is equivalent to minimum wages prescribed for the type of work being done by them. According to the applicants' rejoinder, they are getting only Rs.1800/- per month. There is nothing in the record to indicate that this is the equivalence of the prescribed minimum wages for which the applicants are entitled in view of the Hon'ble Supreme Court's judgments supra.

9. In view of the above discussion, we are of the considered view that the ends of justice would be served in this case if a direction is given to the respondents to consider the representation that would be made by the applicants and pass appropriate orders taking into account the observations in this judgment.

10. For the reasons stated above, both the Original Applications are disposed of with a direction that the respondents shall consider the representation that would be made by the applicants within a period of two months from the date of receipt of this order and pass appropriate orders

keeping in mind the observations of this Tribunal in the aforesaid paragraphs in respect of grant of equivalence of minimum wages to the applicants within a period of two months from the date of receipt of the representation and communicate the same to the applicants. No order as to costs.

(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

Sd/-
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

nlk

CERTIFIED TRUE COPY
Dated 30.10.2009