

સ.એ.ટ. (પ્રક્રિયા) નિર્ણયાકારી બેંચ નાના કાન્ટર્ગરન્ડ દિન: શુલ્ક પ્રાપ્તિ

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 2nd day of March, 2015

CORAM

Hon'ble Mr. Justice K.C. Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Original Application No. 406/2011

Babu Lal s/o Bagta Ram, aged about 29 years, by caste Vishnoi, at present resident of Main Gate, Vyas Colony, Jodhpur, presently working as Casual Labour Chowkidar (Watchman) at Air Force Station, Jodhpur

.....Applicant

By Advocate: Mr. Govind Suthar

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The CPSO, Headquarter, SWAC, Indian Air Force, Sector-9, Gandhi Nagar-09 Gujrat.
3. The Air Officer Commanding, 32 Wing, Air Force Station, C/o 56 APO
4. The Station Security Officer, 32 Wing Air Force Station, C/o 56 APO.
5. The Chief Administrative Officer, 32 Wing, Air Force Ratnada, Jodhpur

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 407/2011

1. Manak Chand s/o Shri Jetha Ram, aged about 27 years (approximately) by caste Harizan (SC), at present residing at Maderna Colony, Jodhpur, presently working as Chowkidar at Air Force Station, Jodhpur
2. Babu Ram s/o Shri Dharma Ram, aged about 31 years by caste Vishnoi at present residing at Main Gate Vyas Colony, Jodhpur, presently working as C.Labour Chowkidar at Air Force Station, Jodhpur

.....Applicants

By Advocate: Mr. Govind Suthar

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The CPSO, Headquarter, SWAC, Indian Air Force, Sector-9, Gandhi Nagar-09 Gujrat.
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5. The Chief Administrative Officer, 32 Wing, Air Force Ratnada, Jodhpur

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

Per Justice K.C.Joshi

The issues involved in both these OAs are identical/similar, therefore, these are being decided by this common order.

2. For the sake of convenience, facts of OA No. 406/2011 are being taken. The applicant in this OA prays for the following reliefs:-

- i) by an appropriate order or direction, the respondents be directed to grant regular pay scale and consider the case of applicant for regularization of his services on the post of Watchman on which he is discharging the duties for last more than 10 years.
- ii) by an appropriate order or direction, the respondents be directed to grant at least minimum of the pay scale in the pay scale of Rs. 5200-20200 with all consequential benefits including arrears of salary from the date of completion of 10 years of service.
- iii) by an appropriate order or direction, the respondents be restrained to terminate the services of the applicant during the pendency of the original application and if during the pendency of the original application, the order of termination is made, the same may kindly be declared illegal and be quashed and set aside.
- iv) 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.

Similar relief has also been prayed by the applicant in OA No.407/2011.



3. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed as Watchman/Chowkidar in the Air Force Station, Jodhpur in July, 2011. He was paid salary of Rs. 1500/- per month till January, 2006 and subsequently his pay was enhanced from Rs. 1500/- to Rs. 3000/- and thereafter from January, 2011 he is being paid a sum of Rs. 3500/- per month, which is less than the minimum wages to be paid to him. The applicant has stated that the certificate (Ann.A/5) issued in favour of one Shri Babu Ram, who is similarly situated person, shows that the salary of the applicant is being drawn from the civilian fund and his services are absolutely substantive in nature, but he has not been paid the minimum of pay scale of the post of Watchman and it is a clear case where the respondent department is involved in unfair labour practices for which appropriate direction needs to be issued for grant of minimum pay of the pay scale to the applicant on the said post. Earlier, the applicant filed OA no.71/2006 claiming minimum of the pay scale and regularization and the Hon'ble Tribunal ordered that although at that stage, the applicant was not entitled to regular pay scale and regularization of service in view of the judgment of Uma Devi, however, it was held that the applicant is working on full time basis and atleast he be paid minimum of the wages. The respondents did not pay minimum wages and, therefore, the applicant filed Contempt Petition in which undertaking was given that the applicant shall be paid the minimum wages of Rs. 169/- per day, but again the respondents did not make payment of minimum wage, therefore, the applicant served notice for demand of justice on 8th July, 2011 (Ann.A/8). When no reply was submitted by the respondent department, the applicant also filed CP No.30/2011, which is pending consideration before this Tribunal. According to the applicant, the respondents are committing contempt by not making payment of minimum of wages as directed by this tribunal vide order dated 28th October, 2009. The applicant has further stated that he is not being granted regularization and regular pay scale of the post of Watchman despite the fact that they have to adhere to the

judgment rendered by the Hon'ble Apex Court in the case of State of Karnataka vs. Uma Devi. Earlier, the Hon'ble Tribunal declined to grant regular pay scale on the ground that the case of Uma Devi does not permit for grant of regularization, but now the applicant is being continued for last more than 10 years and as per the judgment rendered in the case of Uma Devi itself in para 53, it has been held that if any employee has completed 10 years of service, then he is entitled for regularization. The applicant is continuously working with the respondents for last more than 10 years without any intervention of the Court and since the respondents have assured that their services shall not be terminated, it becomes the more necessary that the same should be regularized or regular pay scale may be conferred upon him. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

4. In reply to the OA, the respondents have taken preliminary objection with regard to jurisdiction submitting that the OA is not maintainable before this Tribunal as the applicant is not a Government servant but an employee of NPF. In reply to the facts, it is submitted that the applicant was initially engaged as part time worker as a bus attendant w.e.f. 28.7.1999 on a fixed honorarium of Rs. 800 per month which was paid to him out of Non Public Fund (NPF). The said honorarium was increased from time to time and the security pass was issued for his entry into the Air Force area for performing the aforesaid duties. The respondents have further submitted that to safeguard the domestic area from thieves and other miscreants, the uniform personnel contributed the money and created a fund called NPF and employed these Watchmen. The applicant was being paid honorarium of Rs. 2600/- (1100 + Rs. 1500) per month for his services as part time Watchman and part-time School Bus Attendant and the respondents have denied that the services of the applicant was of substantive nature and that his payment was made out of civilian fund. Although, the pay scale of the Watchman



appointed through due process of selection against the Government vacancy is Rs. 5200-20200, but the same is not applicable to these private Watchmen. The respondents have also denied the averment that the applicant is being paid night duty allowance and liveries and stated that the applicant was paid as per the rates fixed by the Central Government that too in compliance of the Court's order dated 28.10.2009. Further, the respondents have not terminated the services of the applicant and only his work place has been changed due to paucity of fund in the NPF. Hence, the applicant is not entitled to any relief.

5. In rejoinder to the reply, while reiterating the averments made in the OA, the applicant has submitted that the respondents instead of granting minimum wages at that time, displaced him and shifted him to work under SWO as Casual Labour on contract basis vide its communication dated 1st October, 2011 (Ann.A/11). The Hon'ble Tribunal directed that the applicant should be paid minimum wages as he is full time worker on the post of Chowkidar and the representation filed by him should be considered and appropriate orders should be passed for grant of equivalence of minimum wages. So far as preliminary objection regarding maintainability of the OA is concerned, it is submitted that since the applicant was working as full time Chowkidar, therefore, he is entitled to seek direction from this Tribunal for regularization, regular pay scale and against illegal termination and the applicant is entitled to the reliefs.

6. Heard both the parties. So far prayer regarding regularization of services and granting of minimum pay scale is concerned, the applicants in these OAs have earlier filed OA No.71/2006-Babu Lal vs. UOI and OA No. Manak Chand and Anr. Vs. UOI and this Tribunal vide order 28.10.2009 has considered and decided the issues with regard to following points:-

- (i) whether the applicants are entitled for regularization as Watchman.
- (ii) whether the applicant 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 applicant 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.

7. This Tribunal while considering the point (i) and (ii) as above, did not find any merit and rejected the prayer regarding regularization and temporary status with minimum pay scale, therefore, the issues regarding regularization and granting temporary status with minimum pay scale have already been settled and we need not to go further on these issues. So far as point No. (iii) is concerned, after considering point No.(iii), the Bench of this Tribunal held that the applicants are engaged on a full time basis and with regard to point No. (iv), the following observation was made :-

“.....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 applicant are entitled in view of the Hon’ble Supreme Court’s judgment supra.”

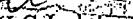


8. In the result, after dealing the above four points, the Tribunal disposed of the OAs with direction that the respondents shall consider the representation that would be made by the applicants within a period of two months and pass appropriate order keeping in view the observations of this Tribunal in respect of equivalence of minimum wages to the applicants and communicate the same to the applicants.

9. Counsel for the applicants relied upon the order dated 21.11.2013 of this Tribunal in OA No.310/2011, Bablu vs. UOI in this regard wherein direction was issued to the respondents to consider the case in the light of the judgments passed by Hon'ble Apex Court in Secretary, State of Karnataka vs. Umedevi (3) and State of Karnataka vs. M.L.Kesari and ors. and shall pay minimum wages to the applicants at the prevalent rates as amended from time to time by the Govt. of India with further direction not to terminate the services except by following due process of law.

10. Considered the rival contention of the parties and perused the record. With regard to prayer (iii) of the applicants regarding termination of service, the stand of the respondents is that the services of the applicants have not terminated but the work place of the applicants was changed to casual employee paid out of the public fund. On the other hand, the stand of the applicants is that their services have been terminated from the post of Chowkidar on which post they have been working for the last 10 years or so. We are of the view that this Tribunal has already held that the applicants are full time workers and if the work is available, the applicants should not be terminated or replaced by other casual labours. Accordingly, both the OAs are disposed of with direction to the respondents to pay the applicants minimum pay as per the prevalent rates as amended from time to time by the Govt. of India and not terminate the services of the applicants by substituting other casual labours, except by due process of law.

Both the OAs stand disposed of as above with no order as to costs.

CERTIFIED	RUE COOKE	[Meenakshi Hooja] Administrative Member	[Justice K. C. Joshi] Judicial Member
Dated 09/07/2015	 		
 अधिकारी अधिकारी (जज.) Judicial Officer (Jud.) अधिकारी अधिकारी Administrative Officer अधिकारी अधिकारी अधिकारी Administrative Officer			

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