

Central Administrative Tribunal
Ernakulam Bench

OA No.621/2012

Monday, this the 10th day of June, 2013.

C O R A M

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. K.C.Paul, age 50 years
S/o Late K.P.Cheku
Security Guard,
Cochin Special Economic Zone (CSEZ)
Kakkanad-682 030.
Residing at Kallungal, Kadaippilly East,
Kadungaloor, U.C.College P.O.,
Aluva-683 102.
2. Mathew Paulose, age 49 years
S/o M.M.Paulose
Security Guard,
Cochin Special Economic Zone (CSEZ)
Kakkanad-682 030.
Residing at Mappilath House
Kizhimani P.O., Ramananalayam
Ernakulam-688 663.
3. C.K.Babu, age 49 years
S/o Kuriakose
Security Guard,
Cochin Special Economic Zone (CSEZ)
Kakkanad-682 030.
Residing at Chirakaparambil House
Chethikode P.O., Ernakulam-682 315.
4. Thampy Varghese, age 51 years
S/o T.K.Varghese
Security Guard,
Cochin Special Economic Zone (CSEZ)
Kakkanad-682 030.
Residing at Tharayil House, Kizhimuri P.O.
Ramamangalam, Ernakulam-686 663.
5. Suthi C.A., age 44 years
S/o C.A.Appadian
Security Guard,
Cochin Special Economic Zone (CSEZ)
Kakkanad-682 030.
Residing at Chakkalaparambu,
Thevara, Ernakulam-682 013.

Applicants

(By Advocate: Mr.M.R.Hariraj)

Versus

1. Union of India represented by
the Secretary, Ministry of Commerce
and Industry, New Delhi-110 001.

2. The Development Commissioner
Cochin Special Economic Zone (CSEZ)
Kakkanad, Cochin-682 037.

3. Deputy Development Commissioner,
CSEZ, Kakkanad, Cochin-682 037.

4. Assistant Development Commissioner (Administrative)
CSEZ, Kakkanad, Cochin-682 037. Respondents

(By Advocate: Mr. Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 10th June, 2013, the Tribunal on the same day delivered the following:-

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

This case relates to continuance of the existing Security Guards in the respondents' organization.

2. Recruitment Rules were framed in respect of the Cochin Special Economic Zone (CSEZ) and in so far as security portfolio is concerned, the hierarchy consists of Security Officer, Asst. Security Officer, Head Security Guard and Security Guards. While the post of Security Guard is tenable by direct recruitment through the medium of the Zilla Sainik Board, the Head Security Guard is tenable by promotion failing which by direct recruitment. Provision also exists for induction from out of the ex-servicemen sponsored by the Zilla Sainiks Board. The applicants were inducted as Security Guards during 2009 and 2010 duly sponsored by the Zilla Sainik Board. The character of their appointment is one of contractual nature and they have not so far been regularized. Their request for regularization was rejected. According to the applicants, they were orally asked to get themselves registered with an outside agency in order to enable themselves to continue in the employment, not on contractual basis but as employees of the contractor. The applicants have, therefore, approached this Tribunal through this OA seeking the following reliefs:-

- a) To quash Annexure A3;
- b) To direct the respondents to consider the applicants for regular appointment to the cadre of Security Guards under the 2nd respondent with all consequential benefits;
- c) To direct the respondents not to prevent the applicants from working as Security Guards and to direct them to engage the applicants as

Security Guards in preference to freshers and juniors;

d) Grant such other reliefs as may be prayed for and the court may deem fit to grant; and

e) To grant the costs of this Original Application.

3. Respondents have contested the OA. They have traced the background of the entire case and stated that a conscious decision was taken insofar as Security Guards are concerned inasmuch as the functions of Security Guards would be accomplished by outsourcing. However, when seven vacancies arose in 2009, these vacancies were filled up by engaging the applicants. The same was purely on daily wages basis with a further condition that the engagement is subject to termination at any time without assigning a reason. The appointment of the applicants is not as per the Recruitment Rules.

4. The applicants have filed their rejoinder in which they have annexed certain letters relating to regularization as Security Guards of some individuals initially appointed on contractual basis like the applicants. They have, in addition, reiterated their contentions as raised in the O.A. An M.A. for entertaining a copy of the order in OA No. 205 of 2012 and also a copy of the duty schedule has also been filed by them, and the same allowed.

5. Counsel for the applicants argued that all along the applicants are being paid by the Department direct. The Recruitment Rules provide for promotion of Security Guards to Head Security Guards. The said Recruitment Rules are still in vogue. True, the applicants have initially been engaged on contractual basis; in the case of some other Security Guards, initially engaged on contractual basis they were later on regularized, as could be seen from Annexure A-5 and A-6, and thus, the same method may be followed in the case of the applicants as well. As a matter of fact, in the case of Head Security Guards who had claimed their promotion to the post of Assistant Security Guards, the respondents had given a commitment that their cases for promotion would be considered when they become eligible on fulfilling the requisite years of service as provided for in the rules. Since the post of Head Security Guards is filled up by way of promotion, the same confirms that some posts of Security Guards should be available the incumbents of which would form the feeder grade for promotion to the post of Head Security Guards.

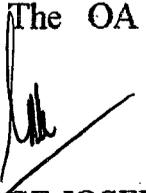
6. Counsel for the respondents, on the other hand, submitted that Security Guards being the lowest rung in the hierarchy, pending amendment to the Recruitment Rules, it was decided to resort to outsourcing to get the functions of Security Guards accomplished.

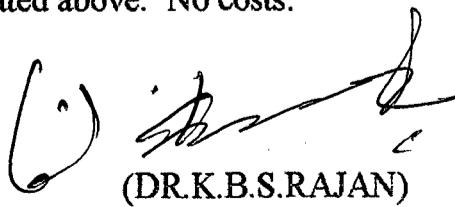
7. Arguments were heard and documents perused. As it is, the Recruitment Rules are still in vogue. The previous batch of contractual Security Guards has already been regularized. The present group of Security Guards have all been inducted through Zilla Sainik Board, which provides for rehabilitation of ex-servicemen. It is not the case of the respondents that the performance of the applicants is unsatisfactory. Justice, therefore, demands that as in the past, the contractual Security Guards may be considered for regularization and it may be after the present lot vacates the post by way of promotion or resignation, resort to outsourcing may be considered. As a matter of fact, before resorting to such outsourcing, the Recruitment Rules may have to be got amended, not only with reference to the post of Security Guards, but also that of Head Security Guards, since this post is tenable by promotion from among Security Guards.

8. The authority and power as well as discretion and prerogative of the respondents in deciding the manner in which anyone has to be accomplished cannot be questioned. If they have decided to resort to outsource in respect of the functions relating to Security Guards, the same cannot be objected to but, at the same time, certain drill, such as amendment to Recruitment Rules, etc., are to be performed before resorting to such outsourcing. The present lot of Security Guards would be fairly hoping that their services too could be got regularized as had happened earlier. These are all ex-servicemen and the Government is keen in ensuring the rehabilitation of such ex-servicemen.

9. Respondents should thus, consider pragmatically and decide the period upto which the services of the existing Security Guards would be retained and may also consider their cases for promotion to the post of Head Security Guards by considering their cases for regularization as had been done earlier, vide Annexure A-5.. In case all the Security Guards may not be promoted to the post of Head Security Guards, to the extent they could be accommodated, the rest may be retained for a reasonable period, so that they could be in a position to secure alternative employment before their services are terminated. Till such time a concrete decision is taken and the applicants informed in writing, the services of the applicants shall not be terminated.

10. The OA is, thus, allowed to the extent stated above. No costs.


(K.GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(DR.K.B.S.RAJAN)
JUDICIAL MEMBER