

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 205 of 2012

Monday, this the 10th day of June, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Mohanan K.C., S/o. Chellappan, aged 51 years, Assistant Security Officer, Cochin Special Economic Zone, Kakkanad, Cochin – 682 037, residing at Pulluvettichira, Ramamangalam PO, 686 663. **Applicant**

(By Advocate – **Mr. M.R. Hariraj**)

V e r s u s

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 application having been heard on 10.06.2013, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant is an Ex-serviceman sponsored by the Jilla Sainik Board for appointment as Assistant Security Officer and by Annexure A2

order dated 4.11.2009 was appointed as Assistant Security Officer in the respondent organization on a purely temporary and daily wages basis. He has been serving in the said post continuously on the aforesaid contract basis. There were certain others also who were appointed on contract basis.

2. As per the Recruitment Rules the total number of posts of Assistant Security Officer is 6 and Recruitment Rules provide for filling up of vacancies by direct recruitment and promotion in the ratio of 2:1. Accordingly, four of the contractual appointees were regularized on the basis of their date of entry and the applicant has been functioning against the post to be filled by promotees.

3. This OA was initially filed as the applicant was asked to keep away from work but the copy of the order so directing was not made available to the applicant. Initially status quo order with regard to the applicant's appointment and continuance in the post was ordered by order dated 8.3.2012. The prayer of the applicant in this OA is as under:-

"i. To call for the records leading to the order of the 4th respondent mandating that the applicant must be given a break in service and quash the same;

ii. direct the respondents not to prevent the applicant from working as Assistant Security Officer and to direct them to engage the applicant as Assistant Security Officer in preference to freshers and juniors;

iii. To direct the respondents to consider the applicant for regular appointment to the cadre of Assistant Security Officer under the 2nd respondent with all consequential benefits;

iv. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

v. To grant the costs of this Original Application."

4. The respondents have filed their reply. They have stated that the engagement to the Assistant Security Officers was against temporary posts then existed. The recruitment rules do not provide for daily wages appointment. Earlier an Original Application No. 794 of 2009 was filed by one Shri E.K. Ulahannan & Anr. claiming promotion to the post of Assistant Security Officer and the Department has made an assurance that the promotion quota post will be kept vacant. Due to the work of exigency it has been decided to engage daily wage personnel against these posts and the applicant is one among the two. Since the applicant has been engaged on daily wages he has no right to claim any regular appointment.

5. In the rejoinder the applicant has submitted that of the four, who were regularized at least one was not figuring in the select list at all. Though the applicant is said to be on daily wages the salary is paid on monthly basis. The selection of the applicant was purely on the basis of the rules.

6. In their additional reply the respondents have stated that the individual who was appointed on regular basis and whose name allegedly does not figure in the select list, in fact, belongs to the previous batch of selection on contract basis. They had reiterated the fact of assurance having been given in respect of OA No. 794 of 2009 stating that as and when the applicants in the OA become eligible for consideration to the post of Assistant Security Officers they would be considered for the same and the vacancies would be kept alive at that time.

7. Counsel for the applicant submitted that of the six posts four are to be filled up by way of direct recruitment and two by way of promotion quota. However, in view of the non-availability of eligible persons for promotion all the six posts have been filled up on contractual basis and out of the same four have been regularly appointed under direct recruitment quota. The two promotional posts of which one is occupied by the applicant will have to be filled up by way of promotion as and when eligible persons in the feeder grade fulfilling the eight years of service contemplated in the recruitment rules are available. That stage would come sometime in 2015 or so. As such, since the work load justifies and the respondents having no eligible person in the feeder grades for promotion as Assistant Security Officer, the applicant should be continued to be engaged till the eligible candidates on promotion basis are available. The counsel further referred to the decision of the Apex court in State of Haryana Vs. Piara Singh – 1992 (4) SCC 118 as per which the ad hoc or temporary hand cannot be replaced by another ad hoc or temporary hand.

8. Counsel for the respondents has not disputed about the facts of the case and the ratio of direct recruitment and promotion quota.

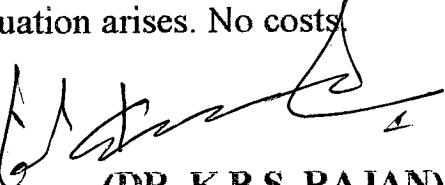
9. Arguments were heard. The recruitment rules do provide for two modes of filling up of vacancy of Assistant Security Officer. Four among the six posts are manned by regular appointees. These regular appointees were earlier engaged in contractual basis as the applicant. The next two posts are to be manned by promotees but no eligible candidates are available. In view of the functional requirement the applicant has been

continuing against one of the promotional posts. Justice demands that the benefits made available to contractual employees by way of appointment on regular basis in the case of four persons aforesaid should be extended to the applicant and similarly situated individuals as and when vacancies against a regular post is available. If vacancy by way of creation of new posts or vacancy under the departmental quota of the existing sanctioned post becomes available then the applicant should be considered against the same.

In any event till such time the Security Guards/Head Security Guards as the case may be in the feeder grade fulfilling the requisite qualifications and experience are not available, there should be no impediment for the Department in continuing the existing contractual engagement of the applicant. Once eligible candidates are available and the applicant by that time is not considered for regular appointment against direct recruitment quota the applicant has to necessarily give way so that the vacancy could be appointed by considering the individuals under promotion quota. The decision in Piara Singh prevents the respondents from resorting to ad hoc appointment by replacing the individual.

10. The OA is allowed to the extent as stated above. The respondents are directed not to disturb the applicant's continuance in the employment on contractual basis till such time the aforesaid situation arises. No costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


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

“SA”