

Central Administrative Tribunal
Ernakulam Bench

OA No.398/2012

Wednesday, this the 26th of June, 2013.

C O R A M

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

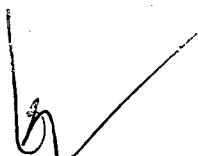
P.Satheeshkumar
Temporary Status Casual Labourer
Office of the Assistant Defence Estates Officer
39/6249, Alappat Cross Road
Kochi-15.
Residing at "Shiva Kripa"
Mangaikavala Junction
Udayamperoor. Applicant
(By Advocate: Mr.Vishnu S.Cempazhanthiyil)

Versus

1. The Assistant Defence Estates Officer
39/6249, Alappat Cross Road
Kochi-15.
2. The Defence Estate Officer
Madras Circle, Annasalai
Teynampet, Chennai-600 018.
3. The Principal Director
Defence Estates, Southern Command
Ministry of Defence
Manekji Mehta Road
Pune-411 001.
4. The Director General
Defence Estates, Ministry of Defence
Raksha Sampada Bhavan
Ulaanbaatar Marg
Delhi Cantt.
Delhi-110 010. Respondents

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

This Original Application having been heard on 26th June, 2013, the Tribunal on the same day delivered the following:-



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

Battle for regularization in this case traces its origin to at least 2003 when OA No.18/03 was filed by the applicant. He was, in fact, engaged as Chowkidar in September, 1988 and continued for a period till February, 2003, where-after, for a period of one year and seven months, he was kept out of duties due to closure of the office of ADEO,Vellayambalam, Thiruvananthapuram, where he was earlier working. He was re-engaged in pursuance of order dated 06.02.2004 in OA No.18/2003 and granted temporary status w.e.f. 01.09.1993. The aforesaid order dated 06.02.2004 clearly provided for consideration of the applicant for absorption on Group-D post in his turn. A vacancy in Group-D did arise as one post of Chainman fell vacant since 31.05.2003. Before the applicant could be considered for the same, the said vacancy was shifted to Delhi. Thus, the applicant could not be considered for the post of Group-D at that time. Another vacancy arose when one Chowkidar expired on 31.01.08 and respondent No.1 referred to the same vacancy and requested respondent No.2 to consider the case of the applicant for absorption on Group-D post. Unfortunately, this was not further considered and thus the applicant was perforce to move the Tribunal in OA 311/2011 and the same was disposed of with direction to respondents 3&4 to consider the representation of the applicant as recommended by his superior and take a decision with regard to absorption of the applicant as Group-D employee. Certain time limit had been calendared for this purpose. By the impugned order dated 24.02.12 (Annexure A-8), the respondents have stated that as per Ministry of Defence letter No. 15(15)/2002/D(Q&C) Vol.II dated 6th March, 2009, all posts of Chainman and Chowkidar stand abolished and there is no such post existing as on date. Again, all Group-D posts have been re-designated as Group-C posts and specific qualifications prescribed. Thus, according to the respondents, the case of the applicant cannot be considered for Group-D post. The applicant has challenged the same and sought for the following reliefs:-



- a) Call for the records leading to the issue of Annexure A8 and set aside Annexure A8.*
- b) Declare that the inaction and delay in taking decision to regularize the applicant as a Group D despite existence of vacancy of Group-D and recommendations of the competent authorities is illegal and arbitrary.*
- c) Direct the respondents to consider the applicant for regularization in the post of Peon which is due to fall vacant on 1.9.2012.*
- d) Direct the respondents to consider absorbing the applicant in a Group-C post.*
- e) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.*
- f) Award the cost of these proceedings.*

2. Respondents have contested the OA. They have confirmed that one post of Peon has been lying vacant since 1st of November 2012 on account of superannuation of one incumbent. Para 5 of the counter refers.

3. In his rejoinder, the applicant has annexed a copy of letter dated 20th May, 2013 wherein the Principal Director, DE, Ministry of Defence, Southern Command, Pune was informed that the applicant had been imparted training to acquire the requisite minimum qualification for entry into PB-1 and he has acquired the requisite qualification for the post of MTS. It has also been indicated in the letter that the applicant is a sincere worker and is performing all multi task activities assigned to him like Peon, Despacher, Dak Rider, Bank duties and all other outside duties diligently.

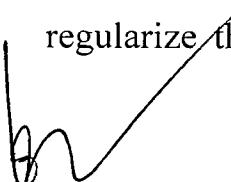
4. Counsel for the applicant submitted that had the Chairman post not been shifted to Delhi, by this time, the applicant could have been positioned as Group-D for a period of over 7 years. Had the vacancy caused by the demise of one Sri V.V.Ravindran on 31.8.2008 been filled up by accommodating the applicant, by this time, he could have been absorbed and regularized as Group-D for more than 5 years. The order of the Tribunal is specific right from the beginning that the applicant should be regularized on any Group-D post. Now that a vacancy is there for the post of Peon and it has been certified by the authorities concerned that the applicant had been imparted requisite training and he had been entrusted with multi task duties, which he is doing diligently, there should be no hitch or impediment in accommodating the applicant against that post and confer him pay scale of PB-1 as in the case of all other Peons.



5. Learned SCGSC has not denied the communications annexed to the OA as well as rejoinder. A copy of the rejoinder has, no doubt, been made available to him only today. SCGSC further submitted that the impugned order had been passed in February, 2012 whereas availability of vacancy is posterior to the date.

6. Arguments were heard and documents perused. That the applicant has to be considered for regularization in accordance with the scheme formulated vide order dated 10.09.93, on the basis of which the applicant had been conferred with temporary status, cannot be denied. On the basis of the temporary status from 1993, the applicant has crystallized his entitlement to be considered for regularization as Group-D employee. As a matter of fact, against the vacancy of Chainman, had he been appointed on the shifting of the post to Delhi, either he could have moved or he would have been accommodated on any other Group-D post. For no fault of the applicant, his case for regularization was not considered at that time. Again, another opportunity was available in 2008, against which also, he was not considered. Statistics are not available on record as to the number of vacancies that arose in the past in respect of Group-D Post and the manner in which they have been filled up. Every 2 vacancies out of 3 should have been filled up by regularizing the casual labourers who acquired temporary status. The applicant was denied this benefit for a substantial period. If at least against the existing vacancy for which he has been found suitable, the respondents do not regularize the services of the applicant, there can be no greater injustice to the applicant. Counsel for the applicant has been fair enough to state that though the applicant could have claimed regularization with retrospective effect, dating back to 2003 or 2008, he would be satisfied with regularizing his appointment at least from November, 2012. Applicant fully deserves the same. Respondents may not be averse to consider the same.

7. Original Application is, therefore, allowed taking into account subsequent development of availability of vacancy and the applicant having been fully trained, as communicated vide Annexure A-9. Impugned order at Annexure A8 is quashed and set aside. Respondents are directed to regularize the service of the applicant against the existing Group-D post



with retrospective effect from the date the vacancy arose, namely November, 2012. This order shall be complied with in intended spirit within a period of two months from the date of communication of this order. No costs.



(DR.K.B.S.RAJAN)
Judicial Member

aa.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CP/180/00106/2014 IN O.A. NO. 398 OF 2012

Monday, this the 5th day of January, 2015

CORAM:

HON'BLE MR. U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR. RUDRA GANGADHARAN, ADMINISTRATIVE MEMBER

P.Satheesh Kumar
Temporary Status Casual Labourer
Office of the Assistant Defence Estates Officer
39/6249, Alappat Cross Road, Kochi – 15
Residing at 'Shiv Kripa'
Mangaikavala Junction, Udayamperoor ... Petitioner

(By Advocate Mr. Vishnu S Chempazhanthiyil)

versus

1. Shri Jaineshwar Sharma
Principal Director
Defence Estates, Southern Command
Ministry of Defence
Manekji Mehta Road, Pune – 411 001
2. Shri Ravikant Chopra
Director General
Defence Estates, Ministry of Defence
Raksha Sampada Bhavan
Ulaanbaatar Marg,
Delhi Cantt., Delhi – 110 010 ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

ORDER

HON'BLE MR. U.SARATHCHANDRAN, JUDICIAL MEMBER

Mr.Vishnu S Chempazhanthiyil, learned counsel for petitioner submitted that the order of this Tribunal has been complied with and the Contempt Petition can be closed.

2. Notice has been discharged. Accordingly, Contempt Petition is closed.

Dated, the 5th January, 2015.

Vishnu S Chempazhanthiyil
RUDRA GANGADHARAN
ADMINISTRATIVE MEMBER

U.SARATHCHANDRAN
JUDICIAL MEMBER