

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

(11)

O.A. No.s. 145 and 146/94 109  
Case No.

DATE OF DECISION 30.7.98

CHIFANJI LAL & SITA RAM Petitioners

Mr. Sanjay Srivastava, proxy counsel for Advocate for the Petitioner (s)  
Mr. S.B. Mathur  
Versus

UNION OF INDIA AND OTHERS Respondents

None Advocate for the Respondent (s)

**CORAM :**

The Hon'ble Mr. FATAU PFAKASH, JUDICIAL MEMBER

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. Whether it needs to be circulated to other Benches of the Tribunal?

  
(FATAU PFAKASH)  
JUDICIAL MEMBER

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 30.7.98

1. OA 145/94

Chiranji Lal son of Shri Kana Ram r/o Village and Post Jaipahari, Distt. Jhunjhunu (Raj.)

2. OA 146/94

Sita Ram son of Shri Bhanwar Lal r/o Village Heerapura, Ajmer Road, Jaipur.

... Applicants

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Telecommunication, New Delhi.
2. Divisional Manager Telegraphs, Office Microwave, Jaipur-I, Hawa Sarak, 22 Godown, Jaipur.
3. Divisional Engineer, Telecom Projects, S-6, Ajay Sadan, Hawa Sarak, Civil Lines, Jaipur.
4. Director of Telecom Project (OFC), 4th Floor, SMTD Compound, M.I.Road, Jaipur.

... Respondents

CORAM:

HON'BLE MR. FATAI FAFAIASH, JUDICIAL MEMBER

For the Applicants

... Mr. Sanjay Srivastava, proxy  
counsel for Mr. S.B. Mathur

For the Respondents

... None

O R D E R

PER HON'BLE MR. FATAI FAFAIASH, JUDICIAL MEMBER

Applicants, Chiranji Lal and Sita Ram, have separately approached this Tribunal through OAs 145 and 146/94 respectively under Section 19 of the Administrative Tribunals Act, 1985, to quash and set aside the memo/order dated 13.8.93 with a further direction to the respondents to absorb them in service as a regular Driver Gr.C. They have also asked them to extend to them all consequential and monetary benefits and to treat them at par with other regularly appointed drivers in the respondent department.

2. Since the facts and the controversy raised in both these OAs are same, these applications are being disposed of by a common order.

3. The facts as alleged by the applicants are that they were employed as casual labourer for carrying out the duties of Driver and are working in the Department of Telecommunications. Applicant Chiranji Lal has averred that he has been working with the respondent department since 27.6.87 and the other

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applicant, Sita Ram, since March, 1988.

4. The grievance of the applicants is that though they are performing the duties of the post of Driver Gr.C continuously, yet they are not being conferred the same status. According to the applicants, the respondents are treating them as casual labourer and as such they have been granted temporary status with designation as 'temporary mazdoor' w.e.f. 25.6.93 vide respondents' order dated 13.8.93 (Annexure A-4 and A-2 respectively in both the QAs). The applicants through these QAs are claiming the payment of similar emoluments as are admissible to a Driver of Gr.C. Having remained unsuccessful, they have now approached this Tribunal to claim the aforesaid relief.

5. The respondents have contested these applications by filing separate replies. The stand of the respondents has been that both the applicants were employed only as casual labourers and not as casual drivers. They have been conferred temporary status w.e.f. 25.6.93 and are being designated as temporary mazdoor. The respondents have also stated that whenever these applicants are engaged for driving vehicles, they are paid at the skilled labour rate of Rs.950/- p.m. + dearness allowance. It has also been averred by the respondents that both the applicants have already been regularised under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 and all benefits to which the applicants are entitled as casual labourer under it are being given to them. It has, therefore, been urged that since none of the applicants has been appointed as a Driver, they cannot be treated as Driver Gr.C nor can be paid the emoluments for that post. They have, therefore, pleaded that these applications should be dismissed with exemplary costs to the respondents.

6. I have heard the learned counsel for the applicant. The pleadings being complete and these two applications being of the year 1994, I heard the learned counsel for the applicant and have also gone through the pleadings. The learned counsel for the respondents has not been able to reach the Tribunal because of some traffic problem.

7. In these QAs the only point for determination is whether the applicants, who have been appointed as casual labourer and from whom the duties of driver are being taken, can claim the same emoluments and benefits as are available on the post of Driver Gr.C ?

8. From the perusal of the order dated 13.8.93, through which though these applicants have been conferred temporary status with designation as 'temporary mazdoor', it is made out that they are entitled to all the benefits which are

listed in para-3 sub clause (i) to (vi) of the scheme, as at Annexure R-1. The learned counsel for the applicants has not been able to satisfy that the applicants were initially appointed on the post of Driver Gr.C. The version of the applicants themselves is that they were initially appointed as casual labourer though the duties of driving the vehicles was also taken from them.

9. It is a settled law that an employee cannot seek those benefits of the post for which he has not been duly selected/appointed. Admittedly, the post of Driver Gr.C is a selection post and the applicants have never been appointed as Driver Gr.C. They cannot, therefore, insist that though the respondents are taking the services of driving the vehicles from them, they are entitled to the same pay scales and benefits which are available to Driver Gr.C in the respondent department. Moreover, the respondents have come with a clear stand that whenever the services of the applicants are utilised as a Driver; they have been paid the emoluments at the rate of Rs.950/-p.m. + dearness allowance, as are admissible to a skilled labour, which decidedly is more than the pay scale admissible to a temporary status holder personnel, as in the case of the applicants. The claim advanced by the applicants in these applications is also not maintainable in view of the law laid down by Hon'ble the Supreme Court in the case of Union of India and Another Vs. Motilal and Others, 1996, S.C.C (L&S) 613, wherein while dealing with the matter of the directly appointed casual mates contrary to rules in the railways department; it has been observed that, "we are also of the considered opinion that conferment of the temporary status as mate ipso facto does not entitle the person concerned to regular absorption as mate". The ratio decidendi laid down by Hon'ble the Supreme Court in the case of Union of India and Another Vs. Motilal and Others (supra) applies with full force in the instant case as well. The claim of the applicants to get all the benefits which are admissible to a regular Driver Gr.C in the respondent department is, therefore, not sustainable. There being no illegality or irregularity in the issuance of the order dated 13.8.93 (Annexure A-1 and A-2 respectively in both the OAs), the relief claimed in this regard is disallowed.

10. The learned counsel for the applicants during the arguments has asserted that though the services of the applicants as Driver are being utilised by the respondent department since the date of their initial employment, yet they have not been paid the emoluments as are admissible to the skilled labour. In these applications none of the applicant has given any detail of the period or duration for which enhanced rates, as are admissible to skilled labour, are said to be not paid to them. On the contrary, the respondents have come with a clear stand that whenever the services of the applicants were utilised as a Driver, they have been paid at the skilled labour rate of Rs.950/-p.m. + dearness allowance. In this view of the matter, if the applicants so choose,



they may approach the respondent department by giving all the particulars in this regard through a representation, which would be considered by the respondents as per law. Another contention of the learned counsel for the applicants is that since the services of the applicants are being utilised as Driver by the respondent department, whenever selection to the post of Driver Gr.C is held by the respondents, they be given due credit for it. In this regard no relief has been claimed by the applicants, yet it is expected that whenever the respondents make selection to the post of Driver Gr.C, the services utilised by the respondents to drive their vehicles; would be given due weight.

11. In view of above, their being no merit in these applications, both these applications are dismissed with no order as to costs. A copy of this order be kept in each of the OA.

*R. Prakash*

(RATAN PRAKASH)  
JUDICIAL MEMBER

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