

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 701 of 2001

Jabalpur, this the 8th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Jai Kumar Tiwari, S/o. Shri
Balram Tiwari, aged about 26
years, (Date of birth 22nd July
1975), R/o. C/o. Ramesh Prasad
Tiwari, Chowkidar, Near ASI Temple,
Khajuraho, Distt. Chhatarpur. ... Applicant

(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul)

Versus

1. The Union of India,
through its Secretary,
Ministry of Tourism, New Delhi.
2. The Regional Director, (W&C),
Govt. of India, Tourist Office,
123 Carve Road, Opposite Church
Gate, Mumbai - 400020.
3. The Manager, Tourist Office,
Govt. of India, New Western Group
of Temples, Khajuraho,
Chhatarpur - 471606. ... Respondents

(By Advocate - Shri B. da. Silva)

ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"(ii) set aside the order dated 18.9.2001 Annexure
A-2, and order dated 27th September, 2001 Annexure
A-1.

(iii) command the respondents to treat the applicant's
initial appointment as regular appoint for all
practical purposes and grant him all consequential
benefits arising thereto;
or

command the respondents to consider the case of the
applicant for regularisation in accordance with law."

2. The brief facts of the case are that the applicant is
having a valid certificate of VIIth class pass from a

recognised educational institution. The applicant's name was enrolled in the Employment Exchange, Chhatarpur. The respondents have sent requisitions to fill up the vacant post of Chowkidar under the direct control and supervision of respondent No. 3. The employment exchange in turn issued letter dated 16.6.99 to the applicant, whereby he was directed to appear before the interview committee on 28.6.1999. Applicant accordingly, appeared before the selection committee alongwith 12 other candidates. In view of the excellent performance of the applicant before a duly constituted interview committee, he was issued with an appointment order dated 15.7.1999 by the respondent No. 3. The applicant was appointed in a regular scale of pay attached to the post of Chowkidar i.e. Rs. 2550-3200/-. His whole service record was clean and unblemished. The applicant had undergone the selection procedure which was being prescribed for a regular selection on the post of Chowkidar. Hence the applicant in all fairness ought to have been treated as a regular appointee. There was regular vacancy of Chowkidar in the office of respondent No. 3. The applicant was continuously working but for an artificial break given to him for one day after rendering 88 days in every spell. In other words the applicant from the date of his appointment i.e. from 15.7.99 till date continuously working except one day break which has been given to him, for the reasons best known to the respondents. This was against the law. The applicant wrote a letter to the respondents, whereby it was desired that the case of the applicant be considered for regularisation for the post of Chowkidar but it has not been considered and decided. The applicant was appointed on adhoc basis vide impugned communication dated 18.9.2001, whereby he was appointed for the period of one month from 28.9.2001 to 29.10.2001. There was yet another communication to the

District Employment Officer, Chhatarpur, whereby the respondent No. 3 desired the names of the candidates for filling up the post of Chowkidar in his office at Khajuraho. It was specifically submitted that there was only one sanctioned post of Chowkidar in the office of respondent No. 3 on which the applicant was working since July, 1999. There was no justification either in not considering and regularising the applicant and sending requisition for the post of Chowkidar which is being occupied by the applicant in view of his selection on regular basis. The applicant has worked for more than 2 years regularly without any spot on his service career and he had undergone the regular selection procedure and was appointed on a regular scale of pay. In this view of the matter there was no justification at all in not regularising the applicant and not granting him regular status and making efforts to fill up the post terminating the applicant. The action of the respondents was arbitrary, unjust, unfair and unreasonable and also against the Articles of Constitution of India. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the applicant argued that he was appointed on 15.7.1999 and he continuously served with all sincerity and devotion in the institution and there was no blame on his whole service period. He has drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Hindustan Machine Tools and Others Vs. M. Rangareddy and others, 2001(1) LLJ SC 596 in which the Hon'ble Supreme Court has held as under :

"Continuance of casual labourer for long spell of two or three years-Presumption of regular need for his

services may then arise - In such circumstances, obligatory for employer to examine feasibility of his regularisation."

According to this ruling the services of the applicant/ have been regularised while by the impugned order dated 18.9.2001 (Annexure A-2) the respondents have passed the order that the applicant is appointed on purely adhoc basis in the Government of India Tourist Office, Khajuraho for the period of one month from 28.9.2001 to 29.10.2001. His appointment is purely on adhoc basis and do not confer any title to or claim for regular appointment. Further this his services are liable to be terminated without notice and without reason being assigned at any time before that date if circumstances so warrant. Subsequently on 27th September, 2001 one letter was issued (Annexure A-1) to the District Employment Officer, Employment Exchange, Chhatarpur for filling up the post of Chowkidar in the office of respondent No. 3. Both these letters are against the law.

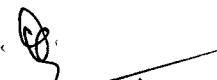
5. On the other hand the learned counsel for the respondents argued that that the appointment of the applicant was purely on adhoc basis and do not confer any title to or claim for regular appointment. Hence the impugned order had been issued which is in accordance with the directions of the appointment letter and is not illegal. However, when the services of the applicant stands discontinued, the question of regularisation does not arise. The applicant was posted on purely adhoc basis and the applicant was fully aware of this fact. The respondents have drawn our attention towards the appointment letter of the applicant dated 15.7.1999 (Annexure A-4). It is clearly mentioned that the applicant was appointed as Chowkidar in the Government of India Tourist Office, Khajuraho, purely on adhoc basis from 2.8.1999 to 27.10.1999 for a period not exceeding 89 days in the time scale of pay of

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Rs. 2550-3200/-. His appointment was made on purely on adhoc basis and is liable to be dispensed with at any time within the period of 89 days without assigning any reasons. The directions and the conditions of the adhoc appointment has been known to the applicant. Hence the applicant of the applicant was made on 15.7.1999. So far as the ruling of the Hon'ble Supreme Court is concerned the services of the applicant are already discontinued, then there is no question of regularisation. Hence this ruling is not applicable to the present case. He further argued that in the rejoinder of the applicant he has mentioned that he was appointed on clean and vacant post, while this fact is wrong and against the record as per appointment order dated 15.7.1999 (Annexure A-4).

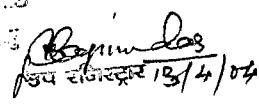
6. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the applicant was appointed on 15.7.1999 purely on adhoc basis from 2.8.1999 to 27.10.1999 for a period not exceeding 89 days and it was also mentioned in this letter that his services were liable to be dispensed with at any time within a period of 89 days without assigning any reason. Though the applicant has served in the office of the respondent No. 3 for more than 2 years, his services are discontinued by the respondents. Hence now he cannot take the benefit of regularisation of his services. Even then the Hon'ble Supreme Court has held that in case of continuance of casual labour for a long spell of 2-3 years - Presumption of regular need for his services may then arise - In such circumstances, obligatory for employer to examine feasibility of his regularisation. Keeping this view of the Hon'ble Supreme Court in mind, we are of the considered opinion that the respondents if have any vacancy in their office of Chowkidar, they may reconsider the case of the applicant in accordance with the rules and law.

7. Accordingly, this Original Application is disposed of with a direction to the respondents that if any vacancy of Chowkidar is there in the office of the respondents, which is yet to be filled in, the applicant may be considered for it giving preference over and above the fresh candidates, in accordance with the rules and law. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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पूछांकन से ओ/ए....., दिल्ली, दि.....
दस्तावेज़ दिल्ली, दि.....
(1) श्रीम. डॉ. रामेश वर्मा, अधिकारी, अधिकारी S. Paul
(2) डॉमेन डॉ. विनोद वर्मा, अधिकारी T. daslina
(3) प्रधानी श्री/मिस, ए.....
(4) विधायक, डॉ. अ. रामेश वर्मा, अधिकारी, अधिकारी
सूचना एवं आवश्यक प्राप्ति की दिल्ली, दि.....

दिल्ली, दि...../3/4/04

ग्राहक
13.4.04