

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 24th day of November, 2010

ORIGINAL APPLICATION NO. 508/2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Amar Deep Singh son of Shri V.P. Singh by caste Rajput, aged about 40 years, resident of C-119 A, Dayanand Marg, Tilak Nagar, Jaipur. Presently working as Casual Labour/Driver in the office of CGHS (Central Government Health Service) 'B' Block, Vidhya Dhar Nagar, Jaipur.

.....Applicant

(By Advocate: Mr. P.N. Jatti)

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Health and family Welfare, Nirman Bhawan, New Delhi.
2. Director General, CGHS, Nirman Bhawan, New Delhi.
3. Additional Director, CGHS, Kendriya Sadan Parisar, B-Block, Vidhyadhar Nagar, Jaipur.

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"(i) That the respondents have recommended for allowing the engagement of the applicant continuously, therefore, the humble applicant prays that by a suitable writ/order or the direction the services of the applicant be allowed to be continued and further the respondents be directed to allow temporary status as per the order dated 2.3.2010 vide Annexure A/1.

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- (ii) That at the time of filling up the posts, the applicant also be considered for the recruitment of a driver or Group 'D'.
- (iii) Any other relief which Hon'ble Bench deems fit."

2. Briefly stated facts of the case are that the applicant was engaged as Daily Wager in the Department w.e.f. 01.09.1995. It is the case of the applicant that on account of superannuation of Shri Ratan Singh, Driver, on 31.08.2004, he was asked to perform the duty of the Driver, which duty he performed continuously. The apprehension of the applicant is that the respondents may again replace his services. It is on the basis of these facts; the applicant has filed this OA.

3. The applicant has placed reliance on a letter dated 02.03.2010 (Annexure A/1), written by the Additional Director, CGHS, Jaipur to the Director, CGHS, New Delhi, wherein it has been stated that after the transfer of the then Additional Director (SAG Level), the services of Driver is not required because the undersigned is not entitled for office vehicle and thus the services of the Driver on wages basis is not essentially required daily. It is further suggested that as one post of Chowkidar has fallen vacant on 13.02.2010 on account of death of Shri Madan Singh, Chowkidar, in a road accident, the applicant may be granted temporary status on Group 'D' post and posted against the vacant post of Chowkidar so that as & when the services of the Driver are required, he may be asked to perform extra duty. It is further suggested that in future as & when the post of Driver is required, the case of the applicant may also be considered accordingly then.

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4. We have heard the learned counsel for the applicant at admission stage. In view of the fact that the applicant was engaged on casual basis w.e.f. 01.09.1995, we are of the view that the applicant is not entitled for temporary status in view of the law laid down by the Apex Court in the case of **Union of India & Another vs. Mohan Pal & Others**, 2002 SCC (L&S) 577, which view was further followed by the Apex Court in the case of **Union of India vs. Gagan Kumar**, 2005 AIR CCW 3594. In the case of Mohan Pal (supra), the Hon'ble Supreme Court considered the scope of casual labourers (Grant of Temporary Status and Regularisation) Scheme 1993, which scheme came into effect from 01.09.1993. The Apex Court has held that the said scheme was applicable to the casual labourers in employment in the Ministries/Department on the date when the scheme came into effect i.e. 01.09.1993 and also that they had worked for at least 240/206 days. The Apex Court further held that conferment of temporary status under the said scheme was one time programme as per the scheme and it was not an on-going scheme requiring the casual labourers to be given temporary status as & when they completed the prescribed minimum days work. Thus, in view of the law laid down by the Apex Court in the case of Mohan Pal (supra), temporary status can be granted only to those casual labourers who have rendered continuous service of one year i.e. at least 240/206 days in a year and who were also in employment on the date when the scheme came into effect i.e. on 01.09.1993. As such the applicant is not entitled for grant of temporary status in terms of the aforesaid

scheme. The recommendations made by the Additional Director vide letter dated 02.03.2010 (Annexure A/1) is contrary to the 1993 Scheme as well as contrary to law and as such is of no consequence. Further from the perusal of the letter dated 02.03.2010, it is evident that the services of the Driver is not required by the Department, as such no direction can be given to the respondents to allow the applicant to continue/perform the duty on daily wage basis. So far as the recommendations made by the Additional Director, CGHS that the applicant may be permitted to be engaged against the post of Chowkidar on daily wage basis, suffice it so say that no such direction can be given to the respondents to carry out ^{the duties of a} the post of Chowkidar on daily wage basis instead of filling the post on regular basis in accordance with rules. The Apex Court in the case of **State of Karnataka vs. Uma Devi (3)**, 2006 SCC (L&S) 753, has categorically held that it is a time that Court desists from issuing directions for continuance of those who have not secured regular appointment as per procedure established. Further the Apex Court relying upon the decision of the Uma Devi has repeatedly held that appointment of any post under the State can only be made after proper advertisement has been made inviting applications from eligible candidates and holding selection by a body of experts. A regular appointment cannot be made without issuing advertisement in a prescribed manner. It is true that a total embargo on such casual or temporary employment is not possible in the exigency of administration and Department resort to such method till the post is not filled in on regular basis in the exigency of service but certainly this Tribunal cannot issue mandamus thereby

directing the respondents to resort to such temporary measures to engage casual labourer who had worked with the Department for some period.

5. In view of what has been stated above, it is not permissible for us to give directions to the respondents to engage the applicant on casual basis against the post of Chowkidar till the same is not filled on regular basis. However, we wish to observe that in case the respondents resort to engage a person on daily wage basis to perform the duty of Chowkidar till the post is not filled in on regular basis, we see no reasons why the respondents will not consider the case of the applicant as recommended by the Additional Director especially when the applicant had rendered services for a period of 5 years 6 months with the Department.

6. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

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