

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 19.03.2013

MA No. 52/2013 (OA No. 633/2011)

Mr. Banwari Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

MA No. 52/2013

Heard on the Misc. Application filed on behalf of the applicant praying for restoration of the Original Application.

Having considered the submissions made on behalf of the respective parties, and the reasons stated in the Misc. Application, I am fully satisfied with the reasons stated and, thus, the Misc. Application for restoration of the Original Application stands allowed.

The Original Application is restored to its original number and status and is taken up for final disposal today itself.

OA No. 633/2011

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 633/2011

Jaipur, the 19th day of March, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Gokul Chand Harijan (Beewal), aged about 37 years, son of Shri Bhanwar Lalji Harijan, resident of Adarsh Nawal Colony, Ward No. 7, Harijan Basti, Chomu, District Jaipur. Presently working as Safai Worker in Sub Aero Post Office, Chomu.

... Applicant
(By Advocate : Mr. Banwari Sharma)

Versus

1. Union of India through Post Master General, Rajasthan Circle, Sardar Patel Marg, Jaipur.
2. The Director Post Services, Rajasthan Circle, Jaipur.
3. The Superintendent of Post Offices (Rural), Jaipur.

... Respondents
(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant has been working with the respondent department since 1988 on the post of Sweeper and to support his averments, he referred to the certificates issued by the Sub Post Master, Chomu dated 15.05.1998 and 10.03.2004 (Annexures A/2 and A/3 respectively).

2. Learned counsel for the applicant submitted that after sub Aero Post Office has been started at Chomu, the area of work has increased tremendously than it was earlier with the

Anil Sharma

result that the applicant has to devote much more time. Moreover, vide letter dated 15.06.2001; he was directed to assign Safai work in the adjoining residential colony at least twice a week. (Annexure A/4).

3. He further submitted that the job which the applicant is performing is of a regular nature and the applicant is required to attend his work daily on a regular basis. The learned counsel for the applicant further submitted that in other post offices of the same dimension or even smaller dimension, Safai workers are engaged on regular basis but inspite of repeated requests, the applicant has been discriminated. He has neither been regularized nor given the benefit of 6th Central Pay Commission, which has been given to other Safai Karamchari. This is violation of Article 14 & 16 of the Constitution of India.

4. The applicant has given representation dated 28.01.2005 and 11.04.2009 (Annexures A/5 & A/6 respectively) to the respondents requesting them for regularization of his services.

5. That the Assistant Postmaster General (Staff & Viz) vide its letter dated 04.06.2009 informed the applicant that his application for regularization has been forwarded to the respondent no. 3 as the steps for regularization have to be taken by him (Annexure A/7). That thereafter the respondent no. 3 vide its letter dated 03.08.2009 (Annexure A/8) informed the applicant that the post of Safai Karamchari is not sanctioned in Chomu Post Office.

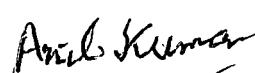
Anil Kumar

6. The learned counsel for the applicant further stated that vide letter dated 18.05.2011 (Annexure A/1), which has been informed to the applicant that there is no provision for regularization for contingent paid employee, there is no extension of Safai area due to project Aero and in the 6th Pay Commission report, no order has been received for enhancement of wages of contingent workers.

7. He further submitted that the wages given to the applicant are very meager and they are not sufficient even to meet the two meals a day for himself and his family members.

8. The learned counsel for the applicant also referred to the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi**, 2006 (4) SCC 1, in support of his averments. He submitted that as per the law settled by the Hon'ble Supreme Court of India in Uma Devi case (supra), the applicant is entitled for regularization in service. Therefore, he argued that the OA be allowed and the respondents be directed to regularize the service of the applicant as Sweeper and given him the benefit of pay fixation as per 6th Central Pay Commission with all other consequential benefits.

9. The applicant has also filed rejoinder to the reply filed by the respondents.



10. On the contrary, the learned counsel for the respondents submitted that the applicant was engaged as Safia Karamchari by the Chomu LSG Post Office to perform the work of Safai of Post office on part time basis on 12.08.1988 and his remuneration was/is paid from the contingent fund as there is no sanctioned post of Safai Karamchari in the Post office. The applicant work is only to clean the post office premise which is the small premises, which hardly takes one hour's time. It is also pertinent to mention here that after the work of Safai of post office, the applicant is free for whole day to do any work. The remuneration/allowances being paid to the applicant is as per the work performed by him from the contingent fund.

11. The learned counsel for the respondents further submitted that the applicant has filed the above OA to regularize his service as Safai Karamchari on the basis that he is working since last 22 years and in view of the judgment of the Hon'ble Supreme Court in the case of Uma Devi (Supra). It is pertinent to mention that there is no sanction post of Safai Karamchari and further that his remuneration is paid from the contingent fund. Thus in view of the law laid down by the Hon'ble Supreme Court in the case of Uma Devi (supra), the applicant is not entitled for regularization.

12. The learned counsel for the respondents further submitted that in the case of Uma Devi (Supra), the Hon'ble Supreme Court has held that the services of such irregularly appointed employees who have worked ten years or more in a

Anil Kumar

duly sanctioned post may be regularized as a one time measure. In this case, the post of Safai Karamchari is not a sanctioned post and the appointment of the applicant is on contingent basis. Therefore, the applicant has no right in view of the law laid down by the Hon'ble Supreme Court. The learned counsel for the respondents further submitted that the applicant at the time of engagement on part time contingent basis was well aware regarding the nature of his employment and this fact that he has not been engaged by a proper selection/procedure as per the rules. Thus in view of the law laid down by the Hon'ble Supreme Court in the case of **Uma Devi**, he has no right to claim regularization in service.

13. The Hon'ble Supreme Court in the case of **Secretary, Ministry of Communication and others vs. Sakku Bai and another**, 1997 (11) SCC 224, by considering the Scheme of Postal Department designated as 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme' framed by the Department pursuant to the directions given by Hon'ble Supreme Court in the case of **Daily Rated Casual Labour vs. Union of India**, which provides that temporary status would be conferred on the casual labourers in employment as 29.11.1989, who are engaged for full working hours viz. 8 hours including one/half hours lunch time, held as under:-

"The Scheme, therefore, quite clearly covers only those casual workers who are engaged full time for 8 working hours and the benefits under the Scheme are conferred on those casual workers who are so covered."

Anil Kumar

Thus in view of the facts of the present OA, the applicant has no right of regularization.

14. Learned counsel for the respondents further submitted that the applicant was engaged by the Post office for cleaning work of Post office on part time basis that is one to two hours and the remuneration paid to him by the post office is from the contingent fund. After performing his part time duty, the applicant is free to do any work and earn money. The remuneration paid to him is as per the work performed by him.

15. He further submitted that so far as letter dated 18.05.2001 (Annexure A/1) is concerned, it is only the information which was provided to the applicant under the Right to Information Act and the same does not provide cause of action to the applicant to file the OA.

16. He further denied that similarly situated employees have been regularized; therefore, he submitted that no discrimination has been done with the applicant. Therefore, the learned counsel for the respondents argued that the OA has no merit and it should be dismissed with costs.

17. Heard the learned counsel for the parties, perused the documents and the case law referred to by the parties. The averment made by the learned counsel for the applicant that the applicant has been working regularly for 8 hours per day has not been substantiated by him by any documents on

Anil Kumar

record. The learned counsel for the applicant has placed on record two certificates issued to him dated 15.05.1998 (Annexure A/2) and certificate issued to him on 10.03.2004 (Annexure A/3). Both these documents clearly mention that the applicant has been working in Chomu Post Office as contingent Sweeper. The respondents also in their reply have stated that the applicant was working as contingent Sweeper and is paid from contingent fund. He is not a full time casual worker. The respondents have categorically stated that there is no provision for providing regular employment to the employees who are paid from the contingent fund and who are working on part time basis. So far as the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi**, 2006 (4) SCC 1, is concerned, as referred to by the learned counsel for the applicant, I have carefully perused the judgment of the Hon'ble Supreme Court and I am inclined to agree with the averments made by the learned counsel for the respondents that under the facts & circumstances of the present case, the ratio decided by the Hon'ble Supreme Court in the case of Uma Devi (Supra) is not applicable. In the case of Uma Devi (supra), the Hon'ble Supreme Court in Para No. 53 has held that:-

“..... the Union of India, the State Government and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts.....”

18. In this case, the respondents have categorically stated that there is no sanctioned post of Sweeper in Chomu Sub Post

Anil Kumar

Office. Therefore, the ratio decided by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi**, 2006 (4) SCC 1, will not be applicable in the present case. Hence, I am of the opinion that the applicant has no right for regularization in view of the law laid down by the Hon'ble Supreme Court.

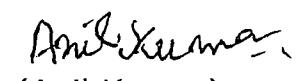
19. The applicant has been engaged by the respondents as a contingent Sweeper on part time basis and since there is no sanctioned post of Sweeper in Chomu Sub Post Office, therefore, I am of the view that the applicant is not entitled for regularization on the post of Sweeper. The learned counsel for the applicant could not prove as to how the applicant has been discriminated viz.a.viz other similarly situated employees. Therefore, on this ground also, no relief can be given to the applicant.

20. With regard to the prayer of the applicant that he has not been given the benefit of the 6th Central Pay Commission, he has not placed any document on record which could prove that 6th Central Pay Commission has made any recommendation with regard to the wages of contingent workers and if they have made any such recommendation, whether that recommendation has been accepted by the Government of India for implementation. On the contrary, the learned counsel for the respondents submitted that official respondents have not received any communication regarding any recommendation of the 6th Central Pay Commission with regard

Anil Kumar

to increase of wages of contingent worker. Therefore, the applicant is not entitled for any revision of wages at present. Thus, in my view the applicant is not entitled for any relief on this count as well.

21. Thus I find no merit in the OA. Consequently, it is dismissed with no order as to costs.


(Anil Kumar)
Member (A)

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