

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

.....
Pronounced on: 18.9.2015.
Reserved on: 16.09.2015

OA. No. 060/00911/14

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

Shiv Charan, son of Sh. Harchandi Lal, Village and Post Office Nagina,
Tehsil Pherozepur Jhirka, District Mewat.

.....Applicant

BY ADVOCATE: SH. R.P. MEHRA

VERSUS

1. Union of India through Secretary, Ministry of Communication, Government of India, New Delhi.
2. The Chief Post Master General, Haryana Circle, Ambala.
4. The Senior Superintendent of Post Offices, Gurgaon Division, Gurgaon.

.....Respondents

BY ADVOCATE: SH. B.B. SHARMA

Ab _____

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (i) Quashing of Annexure A-2 which disallows the applicant equal protection of laws under Article 14 of the Constitution.
- (ii) Direction to the respondents to appoint him in any Group 'D' post in view of the fact that is vested and accrued status of Chowkidar has come out to be full time vis-à-vis Uma Devi's case the applicant has completed more than 11 years of Service as on 10.04.2006.
- (iii) Allow the arrears of pay and allowances w.e.f. the date he is appointed as Group 'D'.

2. Averment has been made in the OA that the applicant was appointed as part-time Chowkidar on 01.04.1995. He continued to serve as such for duration of 5.00 pm till 9.00 am every night i.e. 16 hours daily. Similarly situated persons like the applicant approached the CAT, Chandigarh Bench, to declare them as full timers and all of them succeeded. A copy of the order passed in OAs No. 308-HP-2009 and 309-HP-2009 is annexed as A-3.

3. It is further alleged that the respondents in order to frustrate the judicial process, either terminated the services of the Chowkidars or they were disengaged and shifted to some other part-time jobs such as

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Gramin Dak Sevaks (GDS). The applicant was also compelled to shift as Gramin Dak Sewak Mail Packer (GDSMP) and fearing termination of his job as Chowkidar, he accepted the post of GDSMP on 12.07.2004.

4. It is further stated that the applicant has rendered more than 19 years of service as on date out of which more than 9 years has been utilized as full timer and that of 10 years though classified as Part Time, however, by virtue of duties assigned to be performed the same may come out to be Full Timer. Even otherwise, by virtue of their Service Rules, if the service of 10 years is converted into Full Time the half comes to 5 years and by adding the 9 years' duty of Full Timer Chowkidar, the total service rendered comes to 14 years against which even the Full Time salary or ACP is not being allowed to the applicant. In these circumstances, the applicant approaches this Tribunal to claim pay of Group 'D' employee or promotion in the light of Annexures of the higher authorities attached herein earlier.

5. In the grounds for relief, it is stated as follows:-

- (i) The action of the respondents shifting the applicant to a Part Time from deemed Full Time for 9 years' service is against the spirit of FR 15, hence, void ab initio, illegal.
- (ii) The action of the respondents is highly illegal, violative of Article 14 of the Constitution of India in as much as similarly situated who have been allowed salary of Full Time vide Annexure A-3.

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- (iii) That the action is also discriminatory in as much as three Chowkidars in Rohtak Division and one in Kurukshetra Division have been ordered to be appointed as Group 'D', copies of which are being attached as Annexures A-7 and A-6.
- (iv) That the action of the respondents is against the orders of the DG(P) dated 30.11.1998 attached as Annexure A-5.
- (v) That Farash, Washerman, Malis, Sweepers and Chowkidars have never been given priority in promotion to Group 'D' posts in view of Annexure -4.

Hence this OA.

6. In the written statement filed on behalf of the respondents, it has been stated that the applicant is working as GDS since 12.07.2004. He is no more a casual labourer. A perusal of the order of this Tribunal in OA No. 308/HIP/2009 will disclose that in that case there was a specific finding in para 7 that the "respondents have admitted in clear terms that the applicants are performing duties during whole night. Such admission is not being made in this case, rather the same is vehemently denied and contested. Thus, there cannot be any parity with that case with the instant Original Application and the case law is also distinguishable. In fact, an identical claim has been rejected by this Tribunal in OA No. 666-HR-2013 titled Sat Pal Singh Vs. UOI & Ors. (Annexure R-5). In accordance with the instructions dated 06.06.1988 (Annexure R-3), the applicant was engaged as GDS Packer Feroz Pur Jhirka SO. The applicant has not

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raised any objection at that time and he is continuing as GDS since 12.07.2004 i.e. more than ten years back. As the applicant was initially engaged as Part Time Casual Labourer, he does not come within the purview of Fundamental Rules, which are applicable only to Central Government employees and as such, this OA is not maintainable.

7. In the rejoinder filed on behalf of the applicant, reference has been made to judgement dated 02.03.2015 in CWP No. 9167-CAT of 2007 titled UOI & Ors. Vs. CAT, Chandigarh Bench (Annexure A-2). It is stated that since the applicant completes 20 years as on 01.04.2015, he is entitled to the basic grade of Group 'D' employee and his services may be regularized w.e.f. 01.04.2005 when he completes ten years of service as per the judgement dated 10.04.2006 in **Secretary, State of Karnataka Versus Uma Devi , 2006(2) SCT 462** and may further be allowed Group 'D' basic grade.

8. Arguments advanced by the learned counsel for the parties were heard when the learned counsel for the applicant mainly placed reliance on the claim made in his rejoinder and requested that the OA be disposed of with direction to the respondents that his claim be covered by the judgement dated 02.03.2015 in CWP No. 9167-CAT of 2007

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9. Learned counsel for the respondents stated that the applicant had not impugned any order through this OA. The applicant was a GDS and the judgement dated 02.03.2015 was not applicable in his case as the Gramin Dak Sevaks had their own rules.

10. We have carefully considered the pleadings of the parties and the arguments advanced by the learned counsel. From the material on record, it is clear that the applicant has been working as GDS since 2004. The judgement of the Jurisdictional High Court does not apply to this category of employees as GDS cadre has its own rules. Hence, there being no merit in the OA, the same is rejected. No costs.

(RAJWANT SANDHU)
MEMBER(A)

(DR. BRAHM A.AGRAWAL)
MEMBER(J)

Dated: 18.9.2015
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