

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Chandigarh, this the 8th day of October, 2015

OA. No. 060/01173/2014

**CORAM: HONBLE MRS.RAJWANT SANDHU, MEMBER (A)
HONBLE DR. BRAHM A.AGRAWAL, MEMBER (J)**

Ganga Ram son of Shri Dil Bahadur, age 42 years, working as Chowkidar in the Post Office in the Sub Post Master, Rahonh – 144517 (Sub-Division Nawanshahar – 144514.

.....Applicant

BY ADVOCATE: Sh. K.B. Sharma, proxy counsel for Sh. D.R. Sharma

VERSUS

1. Union of India through Secretary, Ministry of Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Punjab Circle, Chandigarh, Sector 17.
3. Sr. Superintendent of Post Offices, Jalandhar Division, Jalandhar.

.....Respondents

BY ADVOCATE: Sh. Ram Lal Gupta

ORDER

HONBLE MRS. RAJWANT SANDHU, MEMBER(A):-

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

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- (i) That the impugned order dated 17.6.2014 (Annexure A-1) be quashed and set aside being contrary to the judgement of Hon'ble Punjab and Haryana High Court in CWP No. 20521 of 2012 decided on 12.10.2012 and the instructions dated 11.12.2006 issued by the DOPT.
- (ii) That it be declared that applicant is entitled to regularization on the post of Chowkidar on completion of ten years service alongwith all consequential benefits like arrears of pay and allowances etc.
- (iii) That after regularization, applicant be switched over to Old Pension Scheme under CCS (P) Rules, 1972 with all benefits.

2. Averment has been made in the OA that the applicant was engaged as Part Time /Chowkidar at Nawanshahar Sub Post Office by respondent No. 3 w.e.f. 12.5.1995. The respondents issued instructions dated 17.2.1988 (Annexure A-6) clarified vide letter dated 17.5.1989 (Annexure A-7) describing who is to be treated as full time casual worker. The applicant filed OA No. 93/PB/2011 claiming the benefit of OM dated 7.6.1988 and further seeking direction to the respondents to regularize his services as Group 'D' employee. This OA was disposed of by this Tribunal with direction to the respondents to grant the wages of Full Time Chowkidar to the applicant and further consider the case of the applicant for regularization in terms of the instructions dated 11.12.2006 against sanctioned posts whenever available and as per his seniority. Review Application No. 1 of 2012 filed by the applicant for modification of the order dated 11.11.2011 was dismissed on 20.7.2012. The

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respondents filed CWP No. 20551 of 2012 against the order dated 11.11.2011 and the same was dismissed by the Hon'ble High Court vide order dated 12.10.2012.

3. When the respondents did not comply with the order dated 11.11.2011, the applicant filed Execution Application No. 959 of 2013 in this regard. Thereafter, the respondents treated the applicant as a casual labourer w.e.f. 17.2.1995 as evident from letters dated 3.10.2013 and 10.9.2013 (Annexure A-8 colly). When this EA came up for hearing on 16.9.2014, the same was disposed of by this Tribunal as the respondents have passed order dated 17.6.2014 and rejected the case of the applicant for regularization for the post of Chowkidar Group 'D' (Annexure A-9). Hence this OA has been filed impugning the order dated 17.6.2014.

4. Written statement was filed on behalf of the respondents rebutting the claim of the applicant in the OA and rejoinder was filed on behalf of the applicant.

5. When the matter came up for consideration today, learned counsel for the parties were heard in the matter. The learned counsel for the applicant placed reliance on the judgement dated 2.3.2015 in CWP No. 9167-CAT of 2007 and 8 other similar matters. He requested that the

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present OA be disposed of as per the directions of the Hon'ble High Court in the matter.

6. Learned counsel for the respondents reiterated the content of the written statement.

7. We have given our careful consideration to the matter. It was observed that the judgement in CWP No. 9167-CAT of 2007 reads from para 18 onwards as follows:-

“18. We have given our thoughtful consideration to both the reasons assigned by the petitioner-authorities, who have further stated that as of now, fresh engagements on contingent or daily wage basis have been completely stopped. If that is so, it can be safely inferred that only a small group of daily wage part-time employees engaged before 10.04.2006 are still working. If their eligibility of 10 years daily wage service is determined in the year 2014-15 on the basis of cut off date of 10.04.2006, such a policy would be an exercise in futility. The petitioners themselves have taken more than 8 years in giving effect to one of the directions in Uma Devi's case (supra), hence, they cannot reject the claim of daily-wage employees with an ante-date cut off date as the compliance of such an eligibility condition is nearly impossible. This would render the policy totally ineffective and a brutum fulmen without percolating even a drop of benefit to those for whom it has been formulated.

19. It is not the case of petitioner-authorities that the respondents have been retained in service due to the orders of Courts or Tribunal in their favour. They were engaged voluntarily and are serving at the sweet will of the authorities. It simply suggests that there is enough work of perennial nature available to engage the private-respondents. If the work load justifies the retention of private-respondents as daily wagers or contingent paid staff for such a long period, does it not amount to their exploitation only because the

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social and economic conditions do not permit the respondents to bargain with the petitioners?

20. Surely, the respondents cannot be made regular in the absence of sanctioned posts, but then what is the public purpose sought to be achieved through the policy dated 30.06.2014? The Executive who has authored the policy is also competent to create or sanction the posts. Depending upon the total expenditure now being incurred on the retention of respondents, we have no reason to doubt that the petitioners can rationalize their resources and sanction some regular posts every year so that the respondents can be adjusted on regular basis without any unbearable additional financial burden on the Department, but before they leave the department on attaining the age of superannuation.
21. The petitioners might have incurred huge expenditure in defending multiple litigation initiated by contractual employees who are now a diminishing cadre. This is for the petitioners to take a pragmatic view and divert this unproductive expenditure towards sanctioning the posts in a phased manner for adjusting the respondents.
22. We, thus, direct the petitioner-authorities to re- visit the whole issue in its right perspective and complete the exercise to reformulate their policy and take a decision to sanction the posts in phased manner within a specified time- schedule. Let such a decision be taken within a period of six months from the date of receiving a certified copy of this order.
23. Till the exercise as directed above, is undertaken, the respondents shall continue in service with their current status but those of them who have completed 20 years as part-time daily wagers, shall be granted 'minimum' basic pay of Group 'D' post(s) w.e.f. 1.4.2015 and/or the date of completion of 20 years contractual service, whichever is later."

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8. The directions of the Hon'ble High Court in the matter, as per paras 22 and 23 as reproduced above, cover the case of the applicant and the respondents are directed to consider the claim of the applicant as per the directions of the Hon'ble High Court.

9. - With these observations, the OA stands disposed of. No costs.

(RAJWANT SANDHU)
MEMBER(A)

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

Dated: 08.10.2015
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