

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

T.A.NO.133 OF 2013

New Delhi, this the 27th day of October, 2016
CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Shri Parveen Kumar,
s/o Shri Bahadur Singh
2. Shri Suresh Kumar,
S/o Shri Bahadur Singh
3. Shri Mukesh Kumar,
s/o Shri Anokhe Lal,
All R/o X-17/11, Gali No.6, Brahmupuri,
Delhi 110053
4. Shri Ravinder,
S/o Sh.Sant Ram,
R/o A-43, First Pusta, Gali No.1,
New Usmanpur, Delhi 110053
5. Shri Jogender,
S/o Sh.Ram Ji Lal,
R/o Village Shamsher P.O.Morta
Ghaziabad (U.P.)

(By Advocate: Shri U.Shrivastava)

Vs.

1. The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi 110006
2. The Deputy Commissioner,
Municipal Corporation of Delhi,
Shahdara North Zone,
Delhi

(By Advocate: Shri K.M.Singh)

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ORDER**Per RAJ VIR SHARMA, MEMBER(J):**

The applicants had originally filed Suit No.272 of 2008 before the learned Civil Judge, Karkardooma Courts, Delhi, praying for the following reliefs:

- ñi) a decree of mandatory injunction in favour of the plaintiffs and against the defendants thereby directing the defendants/officials acting under the defendants to bring the names of the plaintiffs in the new approved panel of muster roll so that they can be absorbed against the available daily wager post on priority basis according to their seniority (copy of Delhi High Court guidelines/order is enclosed).
- ii) A decree of permanent injunction be passed in favour of plaintiffs as against the defendants thereby restraining the defendants from allowing any new persons to join their duties as beldar on muster roll on the basis of the new panel without including the names of the plaintiffs.
- iii) Cost may also be awarded in favour of the plaintiffs and against the defendants;
- iv) Pass any such other further order and direction which this Hon'ble court may deem fit and proper in the facts and circumstances of the case in favour of the plaintiffs and against the defendants in the interest of justice.ö

1.1 During pendency of the aforesaid suit, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, issued notification dated 1.12.2008 under Section 14(2) of the Administrative Tribunals Act, 1985, specifying 15th December 2008 as the date on and from which the provisions of sub-section (3) of Section 14 of the said Act shall apply to the Municipal Corporation of Delhi

and other organizations, as mentioned in the said notification. Thus, the Central Administrative Tribunal exercises all the jurisdiction, powers and authority exercisable immediately before 15th December, 2008 by all courts in relation to recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of Municipal Corporation of Delhi, and all service matters concerning a person appointed to any service or post in connection with the affairs of Municipal Corporation of Delhi and pertaining to the service of such person in connection with such affairs. In view of the said notification dated 1.12.2008, Suit No. 272 of 2008 was transferred by the learned Civil Judge, Karkardooma Courts, Delhi, to this Bench of the Tribunal, and was accordingly registered as T.A.No.133 of 2013.

1.2 As per Section 29(4)(b) of the Administrative Tribunals Act, 1985, the Tribunal has to deal with the said suit (registered as TA No.133 of 2013) in the same manner as in the case of an application under Section 19 of the Administrative Tribunals Act, 1985, from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Tribunal may deem fit.

1.3 It is pertinent to mention here that before the suit was transferred to this Bench of the Tribunal, the respondents had filed their written statement, and the applicants had filed a rejoinder reply thereto. The applicants had filed their evidence by way of affidavits. They had been examined as P.Ws.1 to 5, and had been cross-examined by the respondents.

The documents, on which the applicants relied in support of their case, had been produced and marked as Exts.

2. The brief facts of the applicants' case are that they and fifteen others were appointed by the respondents to work as Beldars on Muster Roll for 89 days as per the sanction accorded on 31.5.2006. They worked as Beldars on (i) 1st Muster Roll with effect from 16.7.2006 to 15.8.2006 = 31 days; (ii) 2nd Muster Roll with effect from 16.8.2006 to 15.9.2006 = 31 days; and (iii) 3rd Muster Roll with effect from 16.9.2006 to 11.12.2006 = 27 days.

They performed their duties to the utmost satisfaction of the respondents. The respondents issued circular No.DEMS SH(N) 1924 dated 8.1.2007 containing a panel of 235 persons for engagement as Nala Beldars against temporary vacancies arising from time to time in the North Zone of the Municipal Corporation of Delhi. The respondents did not include their names, and the names of the aforesaid 15 others, in the said panel illegally and arbitrarily, though names of 21 persons who had been earlier engaged by the respondents as Nala Beldars in Ward No.83 of Shahdara North Zone were included in the said panel. They being similarly placed as those 21 persons, the respondents ought to have included their names in the said panel.

3. In their written statement, the respondents have stated that in compliance with the order dated 27.2.2006 passed by the Hon'ble High Court of Delhi in C.W.P. No. 24009 of 2005 (Delhi Municipal Mazdoor Union Vs. M.C.D.), they prepared the panel of 235 persons for engagement

as Nala Beldars on Muster Roll/daily wage through physical test and interview. All those candidates who had applied for engagement on daily wage basis appeared for interview and physical test, and the panel of 235 selected persons was finalized and approved by the competent authority. The respondents have also stated that the applicants were engaged by the lower staff without obtaining any order/sanction from the competent authority. The departmental action has already been initiated against the erring officials. However, it has been pointed out by the respondents in paragraph 5 of the written statement that in fact the concerned Department took the orders from the competent authority for sanctioning the 17 post of Nala beldar and 8 post of bullock cart for 89 days of muster roll only. It has been contended by the respondents that as the applicants were unlawfully engaged by the lower staff without obtaining order/approval from the competent authority, and as the period for which they were unlawfully engaged expired on 12.10.2006, the applicants have no right to claim either inclusion of their names in the aforesaid panel or engagement as Nala Beldars.

4. In their rejoinder reply, the applicants have refuted the stand taken by the respondents. It has been stated by the applicants that they had made applications for engagement as Nala Beldars, and only after being selected by the respondents through the required test and interview, they had been engaged as Nala Beldars on Muster Roll/daily wage basis. When they had already worked as Nala Beldars on Muster Roll/daily wage basis by the

date of preparation of the panel of 235 persons, the respondents acted illegally and arbitrarily in not including their names in the said panel. It has also been stated by the applicants that though they made applications for inclusion of their names in the panel dated 8.1.2007, yet the respondents did not consider their applications on the ground that their previous selection/engagement was not sanctioned by the competent authority. The applicants have contended that their engagement as Nala Beldars on Muster Roll/daily wage was duly sanctioned by the competent authority. Had their engagement as Nala Beldars not been approved by the competent authority, they would not have been allowed to work for 89 days, and their wages would not have been paid to them. The fact that they had worked as Nala Beldars on Muster Roll and had been paid the wages for 89 days clearly belies the respondents' plea that the lower staff had engaged the applicants to work as Nala Beldars on Muster Roll for 89 days without obtaining prior sanction/approval of the competent authority and, therefore, they were not entitled to be included in the panel dated 8.1.2007 for engagement as Nala Beldars on Muster Roll/daily wage basis. It has also been contended by the applicants that non-inclusion of their names in the panel dated 8.1.2007 is violative of the direction issued by the Hon'ble High Court of Delhi, vide order dated 27.2.2006 passed in W.P. (C) No. 24009 of 2005 (Delhi Municipal Mazdoor Trade Vs. M.C.D.).

5. We have carefully perused the records, and have heard Shri U.Shrivastava, the learned counsel appearing for the applicants, and Shri K.M.Singh, the learned counsel appearing for the respondents.

6. In support of their case, the applicants have placed reliance on

(i) the order dated 27.2.2006 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 24009 of 2005 (Delhi Municipal Mazdoor Trade Vs. M.C.D.);

(ii) the relevant note-sheet containing the noting and orders of the officers of the Municipal Corporation of Delhi regarding permission for engagement of 8 nos. of B/Carts with 17 nos. of Beldars; (iii) Attendance Sheet showing the names of 25 persons engaged as Nala Beldars during the period from

16.7.2006 to 15.8.2006. It transpires from the aforesaid note-sheet containing the noting and orders of the officers of the Municipal Corporation of Delhi that the competent authority had accorded approval on 31.5.2006 for engagement of 8 nos. of B/Carts with 17 nos. of Beldars. In paragraph

5 of their written statement, the respondents have also admitted that in fact, the concerned Department had taken orders from the competent authority for engagement of 17 Nala Beldars and 8 Bullock Carts on Muster Roll for 89

days only. It also transpires from the Attendance Sheet (Ext.B) that the applicants and 20 others had performed duties with effect from 16.7.2006 to 15.8.2006, and had been paid their wages for the aforesaid period. The applicants' statement that they had worked as Nala Beldars on 2nd Muster Roll with effect from 16.8.2006 to 15.9.2006, and on 3rd Muster Roll with

effect from 16.9.2006 to 11.12.2006 has not been specifically rebutted by the respondents.

7. The order dated 27.2.2006 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 24009 of 2005 (Delhi Municipal Mazdoor Trade Vs. M.C.D.) reads as follows:

ð1. In these writ proceedings, the petitioners seek a direction for quashing of a notice dated 2nd December, 2005 calling for applications, to the position of Safai Karamchari, on muster roll/daily wage basis, issued by the Municipal Corporation of Delhi (hereafter referred to as "the MCD").

2. The grievance of the petitioners is that they have been working as leave substitutes from time to time as per exigencies work of the MCD but their claims are not being given any procedure in the matter of engagement of employees.

3. Learned counsel for the petitioners has relied upon a circular issued on 11.11.2005 by the Additional Commissioner. The relevant portion of the said circular reads as follows:

``We have a clear policy in the MCD that we first prepare a panel of substitutes and make engagements from the said panel as per our requirement and as and when posts of regular daily wagers are available, such substitutes are absorbed against the daily waged posts. They are subsequently regularized in the regular pay scale in a phased manner as per the approved policy of this Corporation. It is thus necessary to check up whether there is already an approved panel and in case there are already enough people on the panel to cater to the need, which may arise in near future, there is no need to prepare a new panel. It should also be notified that those who are already working as Substitute Safai Karamchari and whose names are already in the approved panel, they shall be absorbed against the available daily waged post on priority according to their seniority. Deputy Commissioner, Shahdara (North) Zone is requested to take action in the matter keeping in view the aforesaid facts and circumstances."

4. It was contended during the course of hearing that as per the judgment of the Supreme Court in *State of Haryana and*

Ors. vs. Piara Singh and Ors., 1992

(4) SCC 118, daily wage/ad hoc muster roll employees can be substituted by regular employees and not be replaced by another set of daily wage or casual workers.

5. In the counter affidavit of the respondent, the position taken by the petitioners has not been disputed. However, the MCD has averred that the claim as to engagement of all the petitioners as leave substitute cannot be acceded to since some of them were not engaged as leave substitutes after due authorization. Nevertheless, it is averred that a policy decision to draw up a proper seniority list would be taken and that immediately after preparation of such a seniority list, the vacancies of casual Safai Karamchari would be filled strictly as per such a seniority list.

6. Having considered the submissions, I am of the opinion that the seniority list should be prepared by the MCD by applying a fair and rational criteria either by taking into consideration the period of service or any other equitable principle. Such a seniority list shall be finalized within a period of four weeks from today after duly verifying the claims of the petitioners as well as other who have been engaged on leave substitute basis from time to time. The process of engagement persons or muster roll shall be taken up after the finalization of the seniority list in accordance with the statement of the MCD and completed as per its policy.

7. The writ petition is disposed of in the light of the above directions. No costs.ö

8. It is the admitted position between the parties that the panel dated 8.1.2007 was prepared by the respondent-Municipal Corporation of Delhi in compliance with the above order passed by the Hon'ble High Court of Delhi. In Delhi Municipal Mazdoor Trade Vs. M.C.D (supra), though the respondent-MCD had taken the plea that the claim as to engagement of all the petitioners-leave substitutes could not be acceded to, because some of them were not engaged after due authorization, yet the Hon'ble High Court took the view that the seniority list should be prepared by the MCD by applying a fair and rational criteria either by taking into consideration the

period of service or any other equitable principle, and that such a seniority list shall be finalized after duly verifying the claims of the petitioners as well as others who have been engaged on leave substitute basis from time to time. In view of this observation of the Hon^{ble} High Court of Delhi, we are unable to accept the plea of the respondents that the names of the applicants could not be included in the panel dated 8.1.2007, because their previous engagement was made by the lower staff without obtaining order/approval from the competent authority. As per the observation of the Hon^{ble} High Court, the respondents ought to have included the names of the applicants in the panel dated 8.1.2007 for their engagement as Nala Beldars on Muster Roll/daily wage basis, as they had previously worked as Nala Beldars on Muster Roll/Daily wage basis. Thus, the respondents are found to have acted illegally and arbitrarily in not including the names of the applicants in the panel dated 8.1.2007.

9. As it transpires from the circular dated 8.1.2007, consequent upon physical ability test and personal appearance, the respondent-Municipal Corporation of Delhi had empanelled 235 candidates for being engaged as Nala Beldars against temporary vacancies arising from time to time in North Zone. The applicants have not impleaded those 235 persons as party-respondents in the present proceedings. Therefore, we are not inclined to entertain the prayer made by the applicants for permanent injunction to restrain the respondent-Municipal Corporation of Delhi from

allowing those 235 empanelled candidates to work as Nalla Beldars on Muster Roll.

10. In the light of our above discussions, we direct the respondents to include the names of the applicants in the panel dated 8.1.2007 for engagement as Nalla Beldars on Muster Roll/daily wage basis. The respondents shall comply with the direction contained in this order within three months from today.

11. Resultantly, the T.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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