

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1155/2014

Orders Reserved on: 27.03.2018.
Pronounced On: 28.03.2018.

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Ghanshyam, aged about 40 years
S/o Sh.Mahipal Singh Bist,
Working as CLTS Staff Car Driver
(Group C),
At C-TEMPO, CGO Complex,
Ministry of Mines, New Delhi,
R/o WZ/23/3, Naraina Village,
New Delhi-110028.
2. Ravinder Singh, aged about 35 years,
S/o Sh.Ramphal,
Working as CLTS Sweeper
(Group C),
At C-TEMPO, CGO Complex,
Ministry of Mines, New Delhi,
R/o V&P Saitly,
Distt. Gautam Budh Nagar, UP.

.. Applicants

(By Advocate: Mr. H.P. Chakravorty)

VERSUS

Union of India Through

1. The Secretary (Mines),
Ministry of Coal & Mines,
Govt. of India, Shastri Bhawan,
New Delhi-110001
2. The Centre for Techno-Economic
Mineral Policy Options (C-Tempo),
Ministry of Coal & Mines,
Govt. of India, Department of Mines,
Through Director
CGO Complex, Lodhi Road,
New Delhi-110003.

.. Respondents

(By Advocate: Mr. H.K. Gangwani)

ORDER

Through the medium of this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following reliefs:

“8.1. to allow the OA and direct the respondents to treat the applicants regular Applicant no.1 on the post of Sweeper (sic-Driver) in Group C PB-1, Rs.5200-20200 GP 1900/- and Applicant no.2 on the post of Sweeper in Group D PB-1, Rs.5200-20200 GP Rs.1800/- and from the date they complete three years of un-interrupted service, with all consequential benefits.....”

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant no.1 was appointed as Staff Car Driver (SCD) in the year 1996 and applicant no.2 was appointed as a Sweeper on 19.01.1980, both on daily rate basis in Technical Planning and Policy Committee (TPPC), a Public Sector Undertaking wholly owned and controlled by Ministry of Coal & Mines, Government of India. TPPC was converted into Centre for Techno Economic Mineral Policy Options (C-TEMPO) under the Societies Registration Act. They were granted temporary status by respondent no.1 vide Annexure A-4 office order dated 3.6.2004. The relevant portions of this order are extracted below:

“Subject: Grant of temporary status to the eligible Daily-Wagers/Casual Workers in the Department of Mines-regarding.

In pursuance of the instructions contained in the Department of Personnel & Training's OM No. 51016/2/90-Estt.(C) dated 10.9.1993 on the subject mentioned above, the following two daily-

wage workers of TPPC in this Department are conferred temporary status with effect from 1.6.2004 and until further orders:-

Sl.No. Name

1. Shri Ghanshyam Singh, Staff Car Driver.

2. Shri Ravinder Singh, Sweeper.

2. The conferment of temporary status as above would not involve any change in the duties and responsibilities of the said persons. The engagement will be on daily rate of pay on need basis. They may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work. The persons who have been conferred temporary status will not be brought on the permanent establishment unless he is selected through regular selection process.

3. The temporary status would entitle the above persons, the following benefits:-

i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group "C"/"D" official including DA, HRA and CCA (Group "C"-Rs.3050-4500/- and Group "D" Rs.2550-3200/-). Staff Car Driver will be paid @ Rs.219 per day and Sweeper will be paid @ Rs.182.70/- per day.);

ii) Benefits of increments at the same rate as applicable to a Group "C"/"D" employee would be taken into account for calculating pro-rate wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days' week) in the year from the date of conferment of temporary status;

iii) Leave entitlement will be on pro-rate basis at the rate of one day for every 10 days of work. Casual or any other kind of leave except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting the service; and

iv) Until they are regularized, they would be entitled to productivity linked Bonus/Ad hoc Bonus only at the rates of as applicable to casual labourers.

4. Despite conferment of temporary status, the services of a casual labourer can be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work."

2.2 They have been seeking regularization as permanent employees in accordance with OM dated 25.03.1976 of Department of Expenditure, Ministry of Finance, Government of India (pages 97-100). Their grievance is that despite their repeated requests/representations, the respondents have not considered their prayer for regularization.

2.3 Aggrieved by the inaction on the part of the respondents in regularising their services and making them permanent, they have filed the present OA, praying for the reliefs as indicated in para-2 supra.

3. In support of their prayer for regularization, the applicants have pleaded the following grounds:

3.1 The applicant no.1 has been working as SCD for 17 years and applicant no.2 has been working as Sweeper for 25 years, which would indicate that both these posts are regular posts. Despite it, their request for regularization has not been considered.

3.2 The Hon'ble Supreme Court in **Yashwant Hari Katakhar v. Union of India and Others**, [1996 (32) ATC 787] held that in the absence of material on records to show as to why a temporary employee has not been made permanent for such a long period of service, such temporary employee should be deemed to have been permanent. It is further stated that the Hon'ble Apex Court has expressed its anguish over Government of India for the situations wherein several casual labourers with temporary status have superannuated without being made permanent.

3.3 The Hon'ble Apex Court has also held that when an employee has put in more than 19 years in a quasi-permanent capacity he is entitled to pension.

4. Pursuant to the notice issued, the respondents entered appearance and filed their reply in which broadly they have made the following averments:

4.1 There is no position of Driver or Sweeper available in C-TEMPO (respondent no.2) as of now. In this situation, in the first GC meeting of C-TEMPO, it was decided that temporary status workers (Shri Ravinder Singh, applicant no.2 and Shri Ghanshyam, applicant no.1), who were being paid from the funds of TPPC till creation of C-TEMPO, will be paid from the funds of C-TEMPO till their regularization is finalized in the Ministry of Mines. Accordingly, they are being paid from the budget of C-TEMPO.

4.2 The applicants are not quasi-permanent. The office order dated 3.6.2004 (Annexure A-4) while conferring temporary status on them in TPPC, states that the applicants have been conferred temporary status in TPPS and their engagement will be on daily rate and on need basis and they will not be brought on permanent establishment unless selected through the regular process of selection and their service can be terminated by giving one month notice in writing.

4.3 The DoPT guidelines contained in OM dated 25.03.1976 apply to Ministries/Departments and their attached and subordinate offices. Such guidelines are not applicable to autonomous bodies or societies. Articles 14, 16 and 21 of the Constitution confer equality of opportunity to all citizens for employment and appointment in Government service. The applicants cannot be given preferential treatment.

5 Both sides have placed some documents on record by way of filing additional affidavits.

6. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 27.03.2018. Arguments of Shri H.P. Chakravorty, learned counsel for the applicants and Shri H.K. Gangwani, learned counsel for the respondents were heard.

7. Besides reiterating the pleadings in the OA, Shri Chakravorty, learned counsel for the applicants submitted that applicants are entitled for regularization in terms of the DoPT OM dated 25.03.1976. He also drew my attention to the OM dated 05.11.2014 (page 92) of Department of Expenditure, Ministry of Finance, Government of India, which reads as under:

“Subject: Conversion of temporary posts into permanent ones in Ministries/ Department of the Government of India-regarding.

Reference is invited to this Department’s O.M.No.A-11019/6/75-EG.1 dated 24.3.1976 on the above mentioned subject. It has been decided to review the existing instructions on conversion of temporary posts (Non-plan) into permanent ones.

2. In order to do so, in the first instance, it is required to assess the present position of temporary posts in Ministries/Departments. Accordingly, all the Ministries/Departments are, therefore, requested to furnish the requisite information/details of temporary (non-plan) posts as on date in the Proforma enclosed with the specific approval of the concerned AS&FA.”

8. Shri Chakravorty thus contended that the 1976 OM of DoPT continues to remain valid and the applicants’ request for regularization is required to be considered by the respondents in terms of the *ibid* DoPT OM.

9. *Per contra*, Shri Gangwani, learned counsel for the respondents submitted that there are no sanctioned posts of Driver and Sweeper in C-TEMPO against which request of the applicants for regularization could be considered. He further stated that applicants have already been granted temporary status and they are being continued in service and there is no threat to their engagements. He also argued that C-TEMPO is a society and hence the DoPT OM of 25.03.1976 would not apply to them as they are working in C-TEMPO.

10. I have considered the rival contentions of the parties and have also perused the pleadings and documents annexed thereto. It is an admitted fact that both these applicants have been granted temporary status by an order dated 3.6.2004 of Department of Mines, Government of India (respondent No.1). The said order takes notes of the fact that both the applicants were initially appointed as daily wage workers in TPPC and have been subsequently ceded to C-TEMPO. The grant of temporary status to the applicants has been considered in the said office order by the Department of Mines in accordance with DoPT OM dated 10.09.1993.

11. The applicants have rendered their services initially in TPPC. Thereafter, they are working in C-TEMPO. Thus applicant No.1 has served for 22 years and applicant No.2 for 27 years. It is not the case of the respondents that their services are not being utilized on daily basis. The C-TEMPO came into existence on 18.11.2009. These applicants have served even C-TEMPO for almost a decade. It is very unfortunate that their repeated requests for regularization in service have been

ignored by the respondents and they have been compelled to approach this Tribunal for justice.

12. Admittedly, both the applicants have been granted temporary status by the Ministry of Mines, Government of India vide Annexure A-4 office order dated 03.06.2004 by following the guidelines of the DoPT contained in OM dated 10.09.1993. If temporary status can be granted to them by the Government of India, then by the same logic they could also be considered for regularization in terms of the DoPT OM dated 25.03.1976. The prevarication at the end of the respondents in considering the request of the applicants for regularization is indeed appalling. Pertinent to mention that even a Constitution Bench of the Hon'ble Apex Court in **Secretary, State of Karnataka & Others v. Uma Devi (3) & Others**, [(2006) 3 SCC 1] has held that temporary employees working for over 10 years should be regularized. The relevant part of the judgment reads as under:

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments 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 but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion

within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

13. The arguments put-forth by Shri Gangwani that the services of the applicants could not be regularized as there are no sanctioned posts is specious to say the least. Suffice to mention that the respondents have been availing the services of the applicants for over two decades. How can they now say there are no sanctioned posts. If the services have been availed for such a long time and are continuing to be availed, then it is only logical that the respondents must take necessary action to get the posts created with the approval of the competent authority and regularize the services of these applicants against those posts. Over two decades long services of the applicants under the respondents stand as a testimony that their services are indeed required. Hence, they deserve to be given their due by making them regular employees.

14. In the conspectus of the discussions in the foregoing paras and keeping in view the ratio of law laid down by the Hon'ble Supreme Court in the case of **Uma Devi** (supra) and the DoPT OM dated 25.03.1976, I am of the view that the applicants deserve the reliefs that they have prayed for. Accordingly, this OA is allowed. The respondents are directed to take necessary action for creating a post of SCD and a post of Sweeper

within two months and regularize the services of the applicants against such posts within a fortnight thereafter.

15. No order as to costs.

(K.N. Shrivastava)
Member (A)

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