

**Central Administrative Tribunal
Chandigarh Bench
(Circuit Bench: Jammu)**

OA No.061/01318/2017

&

M.A.No.061/01675/2017

Decided on: 20.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Ms. P. Gopinath, Member (A)

Chamail Singh, aged 41 years,

S/o Sh. Mandher Singh,

R/o Village Bainambhal Tehsil Kotranka

District Rajouri.

... Applicant

(By Mr. R.S. Jamwal, Advocate)

Versus

1. Union of India through Ministry of Human Resource Development, Government of India, Delhi.
2. Director, Navodaya Vidyalay Samiti, New Delhi.
3. Deputy Commissioner, Navodaya Vidyalay Samiti, Regional Office : Bay No. 26-27, Sector 31-A, Chandigarh-160030.
4. Deputy Commissioner, Rajouri, Chairman, Jawahar Navodaya Vidyalay, Kotranka.
5. Principal, Jawohar Navodaya Vidyalay, Kotranka, Rajouri.

... Respondents

(By Mr. Harshwardhan Gupta, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :

The applicant claims to have been initially engaged as Casual Labourer between 1997-2000, as Chowkidar, thereafter, on part time basis for 7 months in the year 2001, in two spells on part time basis, and then on contract basis, in various spells, ever since August, 2001, with intermittent breaks, in Jawahar Navodaya Vidyalaya (for short "JNV"), Rajouri (J&K). He approached the Jammu & Kashmir High Court by filing SWP No.720/2012, with a prayer to direct the respondents to regularize him in the post of Chowkidar. He claimed that he worked against a sanctioned post of Chowkidar for more than a period of 10 years, and stated that in view of the judgment dated 13.03.2015 of the Hon'ble Supreme Court in **AMAR KANT RAI VS. STATE OF BIHAR ETC.** in CIVIL APPEAL NO.2835 OF 2015 (Arising out of SLP (Civil) NO. 20169/2013), he is entitled to the relief of regularization, on the post held by him.

2. Respondents filed a counter affidavit opposing the O.A. It is stated that the engagement of the applicant was purely on contract basis, that too for intermittent periods and he is not entitled to any benefit.

3. Heard Mr. R.S. Jamwal, learned counsel for the applicant and Mr. Hardwardhan Gupta, learned counsel for the respondents.

4. The issue pertaining to the regularization of contractual / casual employees was dealt with by the Constitution Bench of Hon'ble Supreme Court in the case of SECRETARY, STATE OF KARNATAKA & ORS. V. UMADEVI (3) & ORS, (2006) 4 SCC 1. It was held that, whatever be the length of service of a temporary / casual employee, he or she cannot be regularized unless the initial engagement was through the process of open selection in accordance with relevant rules. However, by explaining the judgment in Uma Devi's case (supra), the Hon'ble Apex Court in the case of Amar Kant Rai (supra), has held that in case an employee continues in an organization, against a sanctioned post as such for a period of 10 years, without the aid of any order of court and possesses the requisite qualifications, he/she can be considered for regularization. Therefore, it needs to be verified by the authorities as to :-

- (a) Whether there exists a post of Chowkidar?
- (b) Whether the applicant holds the qualifications prescribed for that post?

© Whether the applicant continued in that post for a period of 10 years, without interruption

Other issues in the judgment of the Apex Court also need to be verified by the respondents. The Tribunal cannot record a finding of fact, whatsoever, on these aspects.

5. We, therefore, dispose of this O.A. leaving it open to the applicant, to submit a representation to the respondents, within a period of two months from today, duly furnishing all the particulars of his engagement, and working in the JNV, Rajouri and the educational qualifications held by him. The respondents in turn shall verify the relevant facts, as well as aspects, as discussed by Hon'ble Supreme Court in the case of Amar Kant Rai (supra), and then pass appropriate orders, within a period of two months from the date of receipt of the representation. The parties are, however, left to bear their own costs.

(P. Gopinath)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

HC*