

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH  
(CIRCUIT BENCH AT SHIMLA)

O.A.NO.063/00534/2017

Orders pronounced on: 23.10.2018  
(Orders reserved on: 11.10.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Ram Pal S/o

Sh. Banshi Ram,

R/o Village Manwa,

P.O. Raghunathpura,

Tehsil Sadar,

Distt. Bilaspur, H.P.

Applicant

By: **MR. V.D. KHIDDTA, ADVOCATE.**

Versus

1. Union of India through its Secretary,  
Ministry of Youth Affairs and Sports,  
Govt. of India, Shastri Bhawan, New Delhi.
2. Director General Nehru Yuva Kendra Sangathan, Ministry of  
Youth Affairs and Sports, 2<sup>nd</sup> Floor, Core-4, Scope Minar, Laxmi  
Nagar Distt. Centre Delhi-110092.
3. The District Youth Coordinator, Nehru Yuva Kendra Sangathan  
Roura Sector-II Bilaspur H.P.
4. Warden/Distt. Youth Coordinator Nehru Yuva Kendra Sangathan  
Roura Sector-II Bilaspur H.P.

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Respondents

By : **MR. ANSHUL BANSAL, ADVOCATE.**

**O R D E R**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the order dated 9.5.2017 (Annexure A-11), vide which his request for regularization of service has been rejected and to consider his claim for regularization with all the consequential benefits.

2. The facts leading to the filing of the instant Original Application (OA), are that the applicant acquired his Master Diploma in Software Technology in the year 2004 and BA Degree in the year 2012. He belongs to Schedule Caste category and was initially engaged as Chowkidar / Watchman in the Youth Hostel at Bilaspur, purely on adhoc basis, vide letter dated 27.09.2002. Since, the respondents did not pay salary to the applicant for the period w.e.f. 01.09.2005 to 31.08.2006, so he sent a demand notice to the Labour Inspector. Ultimately the matter was amicably settled between the parties and the respondents had paid a sum of Rs.46200/- to the applicant towards full and final settlement of all the outstanding dues, as per order dated 19.11.2007(Annexure A-7). The case projected by the applicant is that although he was continuously working for more than 10 years service as Chowkidar / Watchman since September 2002, without any break, but the respondents have not regularized his services, which forced him to file an OA No.1684/HP/2013, in which applicant was given liberty to pursue the matter on departmental side, vide order dated 24.12.2013. He made a detailed representation on 26.01.2014 (Annexure A-9), but the same was not decided, as a result thereof, he filed OA No.063/00090/2014, in which respondent no.2 was directed to decide the pending representation of the applicant dated 26.01.2014, and reminder dated 10.04.2014 sympathetically by passing a speaking

order vide dated 09.03.2017. However, instead of regularizing the service of the applicant, the respondents rejected his representation, vide impugned order dated 09.05.2017 (Annexure A-11) and disengaged his service, which is under challenge in the instant OA. On filing of M.A. No. 063/956/2017, after noticing aforesaid facts and plea that the respondents had abruptly terminated his services, vide impugned letter dated 30.06.2017 (Annexure A-15), which according to him was smeared with malice, a Coordinate Bench of this Tribunal, vide detailed order dated 5.7.2017, stayed the operation of impugned termination orders, Annexure A-11 and A-15.

3. The respondents have opposed the claim of the applicant. They submit that applicant was initially engaged as Chowkidar at Youth Hotel purely on adhoc basis, vide letter dated 27.9.2002 issued by then Warden of Youth Hostel, which was under control of Sports Department, Government of H. P. However, that was subsequently taken over by the respondents upon shifting of Nehru Yuva Kendra, Bilaspur, to Youth Hostel, Jabli, in July, 2006, as per the Ministry of Youth Affairs and Sports, Government of India. The applicant was working as Chowkidar at Youth Hostel, and continued even after shifting of the office. The wages were paid to him as per agreed decision. The Youth Hostel, Jabli, was handed over to NYK, Sangathan, vide letter dated 15.6.2010 and charge was taken over. Since building was not in good condition, it was shifted in 2012-13. Building was declared building in a very pathetic condition. The Youth Hotel has remained unused and has not generated any income from resources and as per policy, Youth Hostel has to generate its own resources to meet out establishment expenses. Now NYK Bilaspur is functioning from a rented accommodation. In the absence of any regular income, the applicant cannot be paid the wages.

There is no requirement of a Chowkidar at Youth Hostel. There is no post, against which the applicant can be regularized. They submit that similar claim of drivers, has been rejected in O.A. No. 1149/2013 – **GOPAL SINGH & OTHERS VS. UNION OF INDIA & OTHERS**, vide order dated 14.9.2015, by Principal Bench of this Tribunal.

4. The applicant has filed a rejoinder. He submits that though applicant was engaged as chowkidar, but he has been performing the clerical duties in the office throughout and in case there is no post of chowkidar / watchman nor it is required, the applicant can be considered for regularization against any clerical post / computer operator against which he has been performing his duties for the last more than 12-14 years. There is sufficient work available in the office against which he has been working for the last more than a decade.

5. We have heard the learned counsel for the parties at length and examined the pleadings on file.

6. It is not in dispute that the applicant has been working with the respondents since his initial engagement in 2002. When orders for considering his claim for regularization were issued, the respondents proceeded to reject his claim vide Annexure A-11 and simultaneously dispensed with his services. In the rejoinder, the applicant claims that even if post of Chowkidar is not available, he has been working against clerical posts and work is available. This plea has not even been denied by the respondents by filing a counter. In these circumstances, the inescapable conclusion is that the respondents indeed have work against which the applicant has been working. In so far as non existence of post of Chowkidar is concerned, even if that is accepted on its face value and decision of this Bench of the Tribunal in the case of Gopal Singh (supra) rendered by Principal Bench, New Delhi, is applied

to this case, one thing is sure that even if benefit of regularization is denied to him on the ground of non availability of a post, there is no denial of fact that the work exists against which the applicant is working and he can be continued against the same, till a post becomes available for considering his claim for regularization and till then he can be continued on existing terms and conditions.

7. In view of the above, while upholding order, Annexure A-11, we quash the order, Annexure A-15, terminating the services of the applicant with the observation that the applicant shall continue in service, in terms of above observations. No costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(AJANTA DAYALAN)**  
**MEMBER (A)**

Place: Chandigarh.  
Dated: 23.10.2018

HC\*

