

**Central Administrative Tribunal
Chandigarh Bench
(Circuit Bench at Srinagar)**

**OA No.62/962/2018
(SWP No.408/2018)**

Decided on : 17.09.2018

1. Mohammad Sultan Wani, aged 42 years, S/o Mohammad Ramzan Wani, R/o Malla Bagh, Naseem Bagh, Srinagar.
2. Tariq Ahmad Malik, R/o Banakoot, Bandipora.
3. Manzoor Ahmad Dar, aged 26 years, S/o Abdul Ahad Dar, R/o Chaterhama, Wadi Mohalla, Srinagar.
4. Sajad Ahmad Bhat, aged 33 years, S/o Ghulam Mohammad Bhat, R/o Batpora, Hazratbal.
5. Amreena Shafi, aged 32 years, D/o Late Mohammad Shafi Shawl, R/o Bohri Kadal, Near Lalli Nasjid, Srinagar.
6. Ghulam Jeelani Dar, aged 38 years, S/o Abdul Salam Dar, R/o Chaterhama, Hazratbal, Srinagar.
7. Arshid Ahmad Mir, aged 32 years, S/o Sona Ullah Mir, R/o Gulab Bagh, Srinagar.
8. Mohammad Rafiq Dar, aged 30 years, S/o Mohammad Shafi Dar, R/o Habak, Shanpora, Srinagar.
9. Abdul Hamid Ganaie, aged 44 years, S/o Ghulam Ahmad Ganaie, R/o Kargam, Palachiti, Budgam.
10. Parvez Ahmad Bhat, aged 42 years, S/o Abdul Ahad Bhat, R/o Nigeen, Hazratbal, Srinagar.
11. Sheeba Parveen, aged 34 years, D/o Late Haji Ghulam Nabi Shah, R/o Alamgari Bazar Near Bilal Masjid, Srinagar.

12. Nisar Ahmad Lone, aged 40 years, S/o Abdul Raheem Lone, R/o Shah Mohalla, Harwan, Srinagar.
13. Khursheed Ahmad Mir, aged 33 years, S/o Abdul Rashid Mir, R/o Nowhatta Near Jamia Masjid, Srinagar.
14. Fayaz Ahmad Mir, aged 35 years, S/o Mohammad Jamal Mir, R/o Khalmulla, Alasteng, Srinagar.
15. Javeed Ahmad Dar, aged 39 years, S/o Ghulam Rasool Dar, R/o Daulatabad, Khanyar, Srinagar.
16. Ghulam Hassan Dhobi, aged 38 years, S/o Abdul Ahad Dhobi, R/o Paizalpora, Shalimar, Srinagar.
17. Manzoor Ahmad Magray, aged 40 years, S/o Abdul Jabar Magray, R/o Chaper, Gund, Ganderbal.

... Applicants

(By Mr. S.A. Makroo, Advocate)

Versus

1. Union of India through Secretary to Government of India, Ministry of Health & Family Welfare, Department of Ayush, Red Cross Building, Red Cross Road, New Delhi.
2. Director General, Central Council for Research in Unani Medicine, JNLBCHAB, 61-65, Institutional Area, Opp. D-Block, Janakpuri, New Delhi-110058.
3. Assistant Director I/C, Regional Research Institute of Medicine, University of Kashmir, Srinagar-6.

... Respondents

(By Mr. A.B. Kuthoo, Advocate)

ORDER (Oral)

P. Gopinath, Member(A) :

The applicants had initially approached the Hon'ble High Court of Jammu & Kashmir by filing SWP No.408/2018, for issuance of a (i) writ of mandamus commanding the respondents to regularize their services against Group D (now re-designated as Group C) posts, as has been done to similarly situated persons (ii) writ of mandamus commanding the respondents to pay all the benefits to them which will accrue to them after their regularization viz. salary, promotion, seniority and other benefits to which they will be entitled and (iii) writ of mandamus commanding the respondents to pay them at least minimum pay scale attached to the post of Group D(now re-designated as Group-C) from the date of their initial appointment in view of the law laid down in the case titled **STATE OF PUNJAB & OTHERS VS. JAGJIT SINGH & OTHERS**, 2016 AIOL 3798. The Petition was transferred to this Tribunal by the High Court, vide order dated 23.7.2018, and has been registered as Original Application (OA) No.062/00962/2018.

2. The bare minimum facts, leading to the filing of this O.A are that applicants joined the respondents as Multipurpose

Attendants/Data Entry Operators, on daily wage basis, on different dates during the years 2004 to 2008. The Attendant applicants were paid wage of Daily Wagers as revised from time to time and at present they are paid Rs.13,000/- per month, and the Data Entry Operators, are getting a sum of Rs.16,000/-. Applicants argue that the nature of duties being performed by them, are at par, with regular employees. However, they are being paid less wages at Rs.13,000/16,000/-, as compared to the regular employees, who are being paid Rs.30,000 (or so). It is claimed that casual labourers, who are discharging equal duties of substantive post, are entitled to same salary, for which reliance is placed upon Jagjit Singh & others, (supra). It is submitted that respondents proceeded to give notional breaks in the engagement of the applicants, but the decision was withdrawn subsequently. The claim, in short, is that they have been working with the respondents for the last 10 years (or so), so they are entitled to regularization of their services and payment of wages at par with regular staff or at least payment of salary, at the minimum of the pay scale of Group - 'D' (Group 'C' since CPC 2006) post.

3. The respondents have resisted the claim of the applicants by filing a reply. They submit that applicants are

not entitled to regularization of their services in terms of the orders of their engagement to the relevant posts. In so far as regular employees are concerned, they had participated in an open selection, in response to advertisements, and were appointed thereafter, after following the provisions of the statutory recruitment rules. In that view of the matter, the applicants cannot make any comparison with the regular employees. There is no sanctioned vacant post of D.E.O. or Multi-Purpose Attendant (MPA) in the respondent office and as such the applicants cannot be regularized, against non-existent posts. They are also not entitled to pay and allowances, at par with regular employees, more so when majority of them are not even having qualifications provided under the statutory recruitment rules. They have thus prayed for dismissal of the O.A.

4. We have heard learned counsel for both the sides at length and examined the material on file.

5. A perusal of record, makes it abundantly clear that there is a clear cut stand taken by the respondents, which goes un-rebutted by applicants, that there is no Scheme under which the claim of the applicants for regularization can be considered by the respondents nor are there any sanctioned posts against

which the claim of the applicants can be entertained by respondents. In that view of the matter, the claim of the applicants for regularization cannot be accepted, at all. However, in so far as the remaining claim of the applicants for grant of minimum of the pay scale of the relevant posts is concerned, that needs a consideration by the respondents.

6. The O.A. is accordingly partly allowed. The relief prayed for in para (i) and (ii) under "Prayer Clause" qua regularization of services of the applicants with all the consequential benefits flowing there from is declined. We issue a direction to the respondents to examine, whether the applicants are discharging the same duties and responsibilities, as are being performed by regularly appointed employees and if it is found that they are discharging the same duties, then pay them wages at the minimum of the pay scale of the post, which duties they are performing.

7. The O.A. stands disposed of in above terms. The parties shall, however, bear their own costs.

(P. Gopinath)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

HC*