

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.614 of 2014

This the 28th Day of February, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Shri Joginder Kumar,
S/o Shri Guru Datt,
R/o 427, Gali No.1, Mohalla Nandram,
Brahampuri, Delhi-53

.....Applicant
(Applicant in person)

VERSUS

1. North Delhi Municipal Corporation,
(through its Commissioner)
Dr. SP Mukherjee Civic Centre,
JL Marg, New Delhi
2. The Commissioner,
North Delhi Municipal Corporation,
Dr. SP Mukherjee Civic Centre, 4th Floor,
JL Marg, New Delhi
3. Director,
North Delhi Municipal Corporation,
Dr. SP Mukherjee Civic Centre, 5th Floor,
JL Marg, New Delhi

.....Respondents
(By Advocate : Shri)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

- “(a) to issue direction to the respondents to consider and appoint the applicant as Senior Stenographer in the Corporation.

- (b) to issue direction to the respondents to pay difference of salary between the regular post of the applicant and the higher post upon which he is working;
- (c) to issue direction to the respondents to regularly pay salary to the applicant which is applicable on higher post along with annual increment.
- (d) the Hon'ble Court may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice."

3. On previous date of hearing, i.e., 20.2.2019, this Court passed the following orders:-

"Nobody appears for the applicant.

Counsel for the respondents is present and draws our attention to Para 4.1 of the OA in which the applicant himself has stated that he was appointed as Daily Wager (Beldar) in 1993.

From the above, it is clear that this is not a regular appointment against any declared vacancy nor has any selection been held against the same. However, he has obtained regularization in the year 2002 against the post of Beldar. Hence, we direct the applicant to explain how he can ask for appointment for a post for which he has never been selected nor applied.

List the case on 28.02.2019 under the caption "PART HEARD MATTERS".

It is made clear that the applicant is given one last opportunity to plead his case, failing which the matter shall be decided as per rules."

4. Today when this matter is taken up for hearing, applicant, who appeared in person sought to withdraw this OA. Since this case is of 2014 in which 24 dates have already been given and the respondents have been heard in detail,

hence, this is no ground for the applicant appearing in person to ask for withdrawal of the OA, especially, in view of the fact that he has engaged a counsel in this matter and counsel has made no such application.

5. Counsel for the respondents after arguing in detail has supplied a copy of the Order of the Hon'ble Delhi High Court in Writ Petition (C) No.233/2003 in the matter of ***Jagan Nath vs. Director General of Works, CPWD*** dated 7.2.2009 and submitted that in the said case, the Hon'ble Delhi High Court upheld the decision of this Tribunal exactly on the similar issue as raised in this OA.

6. We have perused the said Order and we are also of the considered view that the present case is squarely covered by the aforesaid Order of the Hon'ble Delhi High Court, the said Order is reproduced as under:-

“1. The writ petitioner is aggrieved by the order of the Central Administrative Tribunal (hereinafter, ‘CAT’) which rejected its application. His claim was for regularization as Lab Assistant from the date he initially joined the services of the Public Works Department (hereinafter, ‘PWD’).

2. The relevant facts are that the petitioner/applicant was a Muster-Roll employee i.e. Beldar under the respondent/PWD. He claimed that the PWD had assigned duties of Lab Assistant to him with effect from 05.05.1993. He also received pay in the scale of Lab Assistant from that date. There is evidence to this effect in the form of pay determination orders placed on the record. In the meanwhile, certain employees agitated their grievance with respect to the date of appointment and regularization. It became subject matter of the proceedings under Section 10 of Industrial Disputes Act and that award was eventually upheld (with some modifications) by this Court. In the meanwhile, the

applicant/petitioner anticipated that his claim for regularization based upon the strength of his continuous service as Lab Assistant to that post would be rejected and approached the CAT.

3. During the pendency of those proceedings, he was reverted to the post of Beldar on 26.10.2002. The order assigning him the duties of Beldar however, protected the pay and emoluments drawn by him, in the scale of Lab Assistant having regard to the circumstances that he had worked on that position. The petitioner, therefore, claimed entitlement to regularization in the post of Lab Assistant. Besides other pleas he urged that he was eligible to be appointed as Lab Assistant. The Tribunal *inter alia* by the impugned order rejected his claim for regularization stating as follows:-

“6. So far as the prayer of the applicant that he should be regularised and allowed to continue as Lab. Assistant is concerned, we have no hesitation in rejecting the same. Reasons are not far to fetch. It is obvious from the aforesaid that the applicant has not been appointed as Lab. Assistant in accordance with the recruitment rules. No person can be allowed to be regularised de-horse the rules. The applicant having been appointed in terms of the same, the said plea necessarily must fail.

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9. Once again, it does not help the applicant. So far as the relief that is claimed by him, the applicant admittedly is a muster roll worker. If incidentally he was discharging certain duties, that does not confer any right on him and the contention to that effect therefore, must be rejected.

10. In fact the Delhi High Court in its judgement of 20.12.2001, while disposing of the Civil Writ Petition No.6442/2001 had also gone into the same with respect to the similar prayer. The Delhi High Court concluded:

“Petitioners filed their respective OAs before Tribunal on this claiming regularisation of their services as Enquiry Clerks for having worked in that capacity for a number of years. Tribunal dismissed their OAs holding

that that neither award had directed their regularisation nor did the post of Enquiry Clerk exist against which they could be regularised.

Petitioners have not filed this petition challenging Tribunal order. Their counsel Mr. Kapoor again harped on Arbitration Award dated 31.1.88 to claim regularisation of services for them

We have seen the copy of award which was submitted today but have not come across any of its terms directing regularisation of petitioners services as Enquiry Clerks. Confronted with the L/C for petitioners shifted his stand to claim regularisation under Circular dated 4.7.1988 which he claimed to postulate that muster roll casual labour having worked for 240 days in the higher category were entitled to regularisation in that category. We are unable to examine this plea because petitioners had failed to take it in; their OA before Tribunal."(emphasis supplied)Identical plea is being raised once again. We are of the considered opinion that the Award relied upon does not direct regularisation of the applicant in any category either as Lab. Assistant or Enquiry Clerk."

4. The petitioner's counsel urged that the CAT has erred in law and not taking into account the fact that the applicant/petitioner had in fact worked as lab assistant for almost 10 years and his claim could not have been justly ignored keeping these facts in mind. It was contented that analogy drawn between other employees whose cases were considered by the High Court in its earlier judgment was not appropriate.

5. The applicant has not placed on record his appointment letter. It is also not clear whether in fact he possessed eligibility conditions and requisite experience given that the Recruitment Rules mandated that an applicant to the post of Lab Assistant ought to have previous two years experience in a similar laboratory. Undoubtedly, he was asked to discharge the duty of Lab Assistant for fairly long period of eight to nine years. That however, ipso facto does not entitle him, in the opinion of this Court, to claim regularization in the post.

The assignment of duties was by way of convenience, in the absence of a lab assistant. The petitioner was duly compensated as he drew pay and increments in that grade. However, he was appointed and even subsequently regularized to the position of Beldar. Having regard to these circumstances, the claim for regularization from inception in the post of Lab Assistant was not warranted.

6. The application was correctly rejected by the CAT. As a consequence, the writ petition has no merit and therefore dismissed.”

7. In view of the above, and for the foregoing reasons, we dismiss this OA being devoid of merit. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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