

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

O.A. No.3184 of 2016

This the 17th day of January, 2019

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

Mohd. Mustafa
Aged about 44 years,
s/o Sh. Shabbir Ahmad
R/o B-65/1, Main Shalimar Garden,
Sahibabad, Ghaziabad-201005.

....Applicant

(By Advocate : Shri Tenzing Thinlay Lapche)

VERSUS

1. North Delhi Municipal Corporation,
Through its Commissioner (North)
Dr. S.P.M. Civic Centre,
Minto Road, New Delhi-110002.
2. South Delhi Municipal Corporation,
Through its Commissioner (South)
Shiv Manir Marg,
Block G, Lajpat Nagar-II,
New Delhi-110024.
3. East Delhi Municipal Corporation,
Through its Commissioner (East)
419, Udyog Sadan,
Patparganj Industrial Estate,
New Delhi-110096.

.....Respondents

(By Advocate : Shri R.K. Jain)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

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

- “(i) Set aside the impugned office order(s) dated 30.11.2010 issued by the erstwhile Municipal Corporation of Delhi (MCD) to the extent whereby it fails to regularize the service of the applicant on the post of Mate;
- (ii) Issue an appropriate order or direction thereby directing the respondents to regularize the service of the applicant in the post of Mate w.e.f. his date of regularization.
- (iii) Allow the present Application with costs, in favour of the applicant.
- (iv) issue any other appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the interest of justice and in the favour of the applicant.”

3. The grievance of the applicant in this case is with regard to regularization of his services on the post of Beldar vide order dated 30.11.2010 instead of on the post of Mate.

3.1 In this case, it is the contention of the applicant that since his initial appointment on Muster roll basis w.e.f. 1.5.1996 was on the post of Mate and his services as Beldar were regularized w.e.f. 10.7.2009 and the impugned order of regularization to the post of Balder was issued on 30.11.2010.

4. We have perused the impugned order dated 30.11.2010 which provides that applicant’s services as Balder were proposed to be regularized with effect from 1.4.2004, which proposal was accepted by the applicant vide his letter at page 81 of the paper book and consequently, the respondents have issued the Office Order dated 16.12.2010 (page 82 of the

paperbook) regularizing the services of the applicant w.e.f. 1.4.2004 and the applicant was posted against the said vacant post. From the pleadings on record and even on our query to the learned counsel to produce any order appointing the applicant on the post of Mate, counsel referred to certain documents annexed with the OA to say that the applicant was appointed to the post of Mate. However, the said documents relating to transfer of the employee. How and under what circumstances the applicant's designation has been mentioned in the said documents as Mate but from this it is not conclusively proved that he was inducted as Mate on regular basis. As in order to claim regularization on a particular post, the concerned employee has to prove by documentary evidence that initially he was inducted on the said post. But the fact that applicant was initially appointed as Daily Wager on Muster Roll, which does not give him right to claim appointment to the post of Mate, which, as per the provisions of the Recruitment Rules, is a promotion post of the post of Beldar and regular Beldar/Khallasi having three years of regular service are entitled to be considered for promotion to the post of Mate. As such the claim of the applicant that he ought to have been regularised as Mate and not as Beldar, is not sustainable keeping in view of the rule position on the subject.

5. However, having regard to the Office Order dated 16.12.2010 when the respondents have themselves taken a decision to regularize the services of the applicant as Beldar w.e.f. 1.4.2004, his case for promotion to the post of Mate will be considered in accordance with the rules on the subject. It is relevant to mention that in the case of **Secretary, State of Karnataka Vs. Umadevi & Ors.**, (2006) 4 SCC 1, the following ratio has been laid down by the Hon'ble Supreme Court :-

“(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14,16,309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution”.

6. We do not find that the judgment of the Hon'ble Supreme Court in the case of **Uma Devi** cited above has been violated by the respondents in any manner, which is the case in which detailed directions have been given by the Apex Court as to how regularization has to be done and therefore, in view of the above, this Court does not find any fault in the impugned order and as such the present OA is liable to be dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/