

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 294 OF 2003

New Delhi, this the 30 th day of October, 2003

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Hari Ram Yadav (Mali),  
S/o Shri Vishwa Nath Yadav,  
ESI Hospital,  
Sector 24, Noida (UP),  
R/o 33/168, Trilokpuri,  
Delhi-110091
2. Sachinder Kumar Yadav (Mali),  
S/o Shri Arjun Prasad Yadav,  
ESI Hospital, Sector 24,  
Noida (UP),  
R/o D-221, New Ashok Nagar,  
Delhi-91
3. Vedraj Singh (Mali),  
S/o Shri Nathu Singh,  
ESI Hospital, Sector-24,  
Noida (UP),  
R/o B-366, New Ashok Nagar,  
Delhi-91

.....Applicant

(By Advocate : Shri V.P. Trikha)

Versus

1. The Director General,  
ESI Corporation,  
ESIC Building,  
Kotla Road,  
New Delhi-2
2. The Director,  
ESI Corporation, Hospital,  
Sector-24,  
Noida (UP)

.....Respondents

(By Advocate : Ms. Anantmala Poddar)

ORDER (ORAL)

This application has been filed by three applicants (S/Shri Hari Ram Yadav, Sachinder Kumar Yadav and Vedraj Singh) jointly seeking the following reliefs:-

"the respondents may be directed to regularise the applicants as Malis or Stretcher Bearer or Nursing Orderlies with retrospective effect as the applicants have completed more than 12

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years of service continuously without any break and without any cause of complaint."

2. It is claimed that the applicants were appointed as Malis and were granted temporary status w.e.f. 10.9.93 in compliance to the Tribunal's order dated 14.8.96 in OA No.458/95. While disposing that application this Tribunal also observed that the respondents may also "consider their regularisation on regular post as and when posts became available". The grievance of the applicants is that inspite of the representations from time to time, the applicants have not been regularised. The respondents informed the applicants that the matter regarding their regularisation has been taken up with the headquarter. The learned counsel stated that the Director General vide letter dated 14.6.2000 (Annexure-A13) has been approached wherein it has been stated that right from the beginning, four persons have been engaged as Malis on regular daily wages basis. It has also been communicated that the work and conduct of the three malis who are enjoying temporary status, are good. Therefore, they should be regularised by creating posts of Malis. The learned counsel of the applicants invited attention to the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993 wherein it has been provided that "two out of every three vacancies in Group 'D' cadre in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. The learned counsel pointed out that as

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earlier vide letter dated 26.4.93 (Annexure-A9) the matter was taken up with the Director (Medical) Hqrs. wherein it has been stated that the recruitment of these Malis was not done specifically as Malis. They were recruited along with other Nursing Orderlies and Sweepers which is included in the sanctioned strength of 80 Class IV posts. Since the hospital was at the infant stage and the lawns had to be looked after daily, it was decided to deploy 4 persons who had some prior knowledge of horticulture as Malis. In fact their salary was being booked against 14 vacant posts of Stretcher Bearers for which sanction exists.

3. The learned counsel of the applicants further pointed out that the applicants were recruited as Nursing Orderlies which is confirmed from the letter dated 15.8.93 (Annexure-A10) addressed to the Medical Commissioner, ESI Corporation, New Delhi by the Director (Medical), Noida. In this letter itself, it has been mentioned that the recruitment of Nursing Orderlies is being processed at Basaidarapur for various hospitals. It was, therefore, suggested that these four Malies who had been recruited as "Nursing Orderlies" on Daily Wages may be considered for posts of Nursing Orderlies. The learned counsel of the applicants stated that the applicants were eligible for Nursing Orderlies. He referred to ESIC (Recruitment) Regulations, 1977 Group 'C' and 'D' (Para-Medical) Posts wherein it has been provided that the recruitment of Nursing Orderly/Stretcher Bearer was 100% by promotion. The learned counsel stated

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that all of the applicants were eligible to be so-appointed. Therefore, they should have been regularised in any Group 'D' posts.

4. The respondents have opposed the OA. It is stated in the reply that the applicants are not eligible for appointment as Nursing Orderlies, Peon etc. as they do not fulfil the requirements laid down in Statutory Recruitment Regulations. It has also been pointed out that the matter regarding creation of posts of Mali was taken up but the sanction was not given as there was no requirement of regular workers as Malis. It has also been stated by the respondents that these applicants were not recruited as Nursing Orderlies/Stretcher bearers. The correspondence on which reliance is placed suggests only that the respondents are trying to accommodate the applicants in any other Class-IV posts on humanitarian ground. It is also stated that the applicants are free to apply against vacant Class IV posts as and when recruitment for such posts are made for which they are eligible.

5. In the rejoinder, the applicants' counsel has drawn our attention to the several notices issued by office in which the applicants have been shown as on duties in the X-ray Unit.

6. After considering the arguments of the learned counsel of both the parties and after taking into account the material available on record, I find that the grievance of the applicants is well-founded. This Tribunal vide order dated 14.8.96 in OA No.458/95 had

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already directed the respondents to grant temporary status to the applicants. During the course of argument, the respondents' learned counsel agree to grant temporary status w.e.f. 10.9.93 and also consider their cases for regularisation in their turn as and when vacancies were available. The case of the respondents is that there are no vacancies of Malis as no post has been created and, therefore, the applicants cannot be regularised. This stand of the respondents cannot be accepted in view of the fact that the applicants have been working since long and have been accorded temporary status in the year 1993. This fact that they have been working since long proves that there is need of work in the respondents' department. Therefore, the respondents should have taken care either to create posts of Malis if they were taking such work from them or considering their long service in the department, they should have been regularised on any other posts of group 'D'. There is enough material on record to show that the applicants are no longer working as Malis only but they are working as Attendant, Nursing Orderlies etc.. The learned counsel of the applicants has placed on record a copy of the Recruitment Rules which indicates that the applicants are prima facie eligible for these posts. In view of this matter, the respondents are directed to consider the case of the applicants against any vacancies of Group 'D' for which they are eligible. The fact that the matter has been lingering on for more than a decade indicates that the respondents are not serious in creating posts of Malis. The applicants are being paid against the sanctioned posts of Nursing Orderlies. It is,

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therefore, directed that the respondents may consider the cases of the applicants for their regularisation on those posts if there are existing vacancies after considering the suitability of the applicants. If necessary, relaxation in age may also be considered by the respondents in favour of the applicants as these applicants are stated to be performing their duties to the satisfaction of the respondents.

7. The respondents are directed to implement the directions contained in this order within four months from the date of receipt of a copy of this order.

8. In view of the observations and directions contained in the preceding paragraphs, the OA is disposed of without any order as to costs.



(R.K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

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