

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No: 2517/2003

New Delhi, this the 23rd of October, 2003

Hon'ble Shri V.K.Majotra, Vice-Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Sunil Kumar
S/o Shri Attar Singh,
Working as Enquiry Clerk in CPWD
Enquiry Office, P-II Sub Division,
Sadiq Nagar, New Delhi. Applicants
(By Advocate: Shri K.K.Patel)

Versus

1. Central Public Works Department through
The Director General (Works)
Nirman Bhawan,
New Delhi. 4. The Executive Engineer,
R Division, CPWD,
Andrewj Ganj,
New Delhi - 110 049.
2. The Superintending Engineer,
Delhi Central Circle,
VIII CPWD, R.K.Puram,
New Delhi.
3. Superintending Engineer,
Delhi Central Circle 8,
CPWD, R.K. Puram,
New Delhi. Respondents

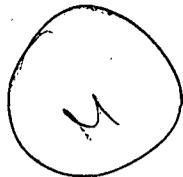
(By Advocate: Ms. Pratima K. Gupta)

ORDER (ORAL)~

Order delivered by Shri Shanker Raju, Member (J)

Applicant impugns respondents' order dated 30.9.1999 wherein his request for absorption as Enquiry Clerk (LDC) has been turned down. Applicant has sought quashing of the aforesaid order with direction to the respondents to regularise him as Enquiry Clerk w.e.f. 4.7.1988 with all consequential benefits.

2. Applicant was engaged as Beldar on muster roll w.e.f. 1.8.1978 and was regularized in Work Charged Establishment w.e.f. 13.1.1986. During this



interragnum, he had passed his Graduation and had been performing the duties of Enquiry Clerk i.e. registering complaints from 1.8.1978 till date. As the request of the applicant for regularization was not acceded to, applicant filed OA 1740/97 before this Tribunal. By an order dated 31.8.1998, directions were issued to the respondents to consider regularization of the applicant in the light of the directions issued in OA 712/91.

3. In compliance thereof, by an order dated 30.09.99 respondents on the ground that there is no channel to absorb Beldars to the post of Enquiry Clerk as recruitment for the post is to be made only through the Staff Selection Commission, turned down his request.

4. Being aggrieved by non-compliance of the order, applicant preferred Contempt Petition 105/99 which was disposed of on 27.6.2000 holding that no willful disobedience is attributed to the respondents.

5. Against this order, applicant preferred CWP 3718/2000 before the High Court of Delhi. By an order dated 5.4.2002 affirming the order in contempt, applicant has been accorded liberty to assail his grievance in accordance with law.

6. The aforesaid resulted in filing of OA 319/2003 where status quo was maintained. The aforesaid OA was withdrawn with liberty to file a fresh OA as

order dated 30.09.1993 was not assailed therein, as stated at Bar by Shri K.K.Patel, learned counsel for the applicant.

7. Present OA has been filed by the applicant to challenge non-regularisation.

8. Respondents by an order dated 17.10.2003, as the stay has been vacated on withdrawal of OA 319/2003 on 13.10.2003, disallowed the applicant to function as Enquiry Clerk, which has been assailed and a restraint order has been prayed by the applicant by filing MA 2245/03. Learned counsel for the respondents states at the Bar that the aforesaid order, though indicates presumed service but has not been served upon the applicant.

9. Shri K.K.Patel, learned counsel for the applicant states that as per respondents' order dated 4.7.1988, which is in partial modification of Directorate's OM dated 14.10.1982 muster roll workers having rendered 240 days service each in two consecutive years in a higher category, are to be absorbed. It is in this backdrop stated that in OA 712/91 filed by similarly circumstance Beldars i.e. Ram Nath Singh, directions have been issued by the Tribunal on 5.5.1993 to consider regularisation of the applicants holding that they have a legal obligation to consider the case of the applicant in accordance with law. It is further contended that an SLP filed before the Apex Court by the

respondents on the ground that recruitment to the post of clerical cadre is conducted through the Staff Selection Commission and circular applies only to muster roll workers and as post of Enquiry Clerk is not a work charged establishment and in absence of any post designated as Enquiry Clerk, directions of the Tribunal cannot be sustained. By referring to the decision of the Apex Court it is stated that the Apex Court has rejected the plea of the respondents as no question of law has arisen for determination. In nutshell, what has been contended is that the decision of the Tribunal has attained finality and in view of rejection of SLP, it acts as a precedent and similar directions are to be issued in favour of the applicant. Furthermore, it is urged that Ram Nath & Others have already been absorbed in the year 1994.

10. Referring to another case decided by the Tribunal in OA No. 440/95 on 28.9.1998 in Ashok Kumar Misra & Others vs. UOI relying upon the decision of the Apex Court, directions have been issued to pay salary and other allowances payable to regular Clerks/Enquiry Clerks to the applicants for the period they have shouldered the responsibilities of the higher post and to consider them for regularisation. Writ petition No. 4295/99 filed before the High Court of Delhi was allowed affirming the decision of the Tribunal. However, it is stated that the decision of the High Court of Delhi was challenged before the Apex Court and the case has been remanded back to the High Court for fresh consideration.

11. In this conspectus, it is stated that the applicant has a right to be regularized as an Enquiry Clerk as he fulfills the eligibility criteria for the post as the defence taken by the respondents has already been dealt with by the Apex Court in Ram Nath's case (supra) and finding no question of law involved, they are estopped from raising the aforesaid pleas.

12. On the other hand, learned counsel for the respondents Ms. Protima Gupta vehemently opposed the contentions but has not disputed the pendency of CWP 4295/99 before the High Court of Delhi as remanded back from the Apex Court. On merits, however, it is contended that subsequent to the arbitration award dated 31.1.1988 regarding re-categorisation/re-classification of the work charged establishment, the same was modified by the Delhi High Court in its judgement dated 28.1.1992 as well as 19.11.1996 and 25.9.1998 in CCP No. 87/97, 106/97, CMP 523, 560/97, CMP 571/97 and CMP No. 602/97 except, according to the Beldars, salary for the post for which they had worked being Beldar as Enquiry Clerk there is no award or finding as to regularisation. This, according to the learned counsel, is an additional factor which has been taken into consideration in the contempt petition dismissed by this court in the case of the applicant on 27.06.2000.

13. Ms. Pratima K. Gupta contends that the circular in reference is applicable only to muster roll workers for absorption in work charged establishment but

cannot be held to be applicable for regularisation to group 'C' post i.e. Enquiry Clerk which has a mode of recruitment through Staff Selection Commission. Referring to the decision of the coordinate Benches in OA 431/96 M. Chandrasekharan vs. CPWD decided on 1.3.2000, as well as C.A. No. 917/99 in case of Harish Chander Kala vs. CPWD decided on 30.10.2000 it is stated that a similar request made by Beldars for Enquiry Clerk has been turned down,

14. We have considered the rival contentions of the parties and perused the material on record,

15. In Ashok Kumar Mishra's case (supra) not only the award but other factors have been duly considered by the Tribunal keeping in view the decision in SLP in Ramnath's case (supra) directions have been issued to consider regularisation of the applicants therein working as Beldars as Enquiry Clerk. These directions have been affirmed by the High Court of Delhi but on SLP the Apex Court remanded back the case for fresh consideration.

16. As the matter is subjudice before the High Court of Delhi in all fitness of things and in the interest of justice, regularisation of the applicant shall have to be given effect to as per the decision to be arrived at by the Delhi High Court in Misra's case (supra). In so far as continuation of the applicant as Enquiry Clerk is concerned, we hold that till the case

of the applicant for regularisation in terms of decision of the High Court is made, applicant shall be allowed to continue to perform the duties as Enquiry Clerk in accordance with rules and instructions. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice Chairman (A)

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