

*Central Administrative Tribunal
Principal Bench*

*MA Nos.2161, 1664 & 344 of 2005
In
OA No.2022/2003*



New Delhi this the 20th day of March, 2006.

Hon'ble Mr. Shanker Raju, Hon'ble Member (J)

Hari Ram & Others

-Applicants

(By Advocate Shri U. Srivastava)

Versus

Union of India & Others

-Respondents

(By Advocate Shri D.S. Mahendru)

O R D E R

MA-1664/2005 has been filed by applicants, seeking implementation of an order passed by the Tribunal on 11.11.2003 in OA-2022/2003, whereby having regard to the fact that applicants had completed 240 days in two consecutive years have a right to be considered for regularization under DoPT guidelines of 7.6.1988. As a result thereof, respondents have been directed to consider the claims of applicants for regularization by counting Sundays and holidays.

2. Respondents have contended that no register is maintained of persons in the 266 Coy. Accordingly vide MA No.2161/2005 and MA-344/2005 respondents have been directed to show whether paid holidays and Sundays have been counted on re-calculation of the working days for the purpose of regularization. By an order dated 23.2.2006 these MAs have been listed for hearing.

3. Respondents in their reply to MA-1664/2005 filed an affidavit where letter dated 1.3.2006 informs that paid holidays and Sundays had been counted

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and on availability of regular vacancies in group 'D' applicants would be considered for regularization.

4. Shri U. Srivastava , learned counsel appearing for applicants contends that in the wake of an advertisement issued by the respondents for the posts of watchman and safaiwala on 20.11.2005 there is a presumption of availability of vacancies in group 'D' with the respondents. Accordingly claims of applicants are to be processed.

5. On the other hand, by an order passed on 6.3.2006 by the Tribunal respondents have been directed to clarify as to filling up of the posts advertised through advertisement dated 20.11.2005 and also in the wake of the fact that an undertaking given by respondents on 10.2.2006 that they are not appointing any one on any group 'D' post by virtue of an order passed on 11.3.2006 the respondents, i.e., Col. Commandant informed that three posts, i.e., two for chowkidar and one for safaiwala were released by the Army Headquarters. Applicants had submitted their applications for the same which were presented before the Board and were rejected as they do not fulfill the conditions. However, in the category of mazdoors it is stated that while counting paid holidays and Sundays as and when Army Headquarters sanction regular posts of mazdoor claims of applicants would be considered. Learned counsel would also contend that they have filled up the three posts.

6. On the other hand, respondents' counsel in rebuttal stated that though applicants are utilized for work for 30 days, they are being paid only for 13 days.

7. I have carefully considered the rival contentions of the parties and perused the material on record. In the matter of casual work no impediment or specialization as a skilled worker can be insisted. A casual worker does not hold a post and whatever work he performs he can be regularized on that

irrespective of the nomenclature of the post in group 'D' in the quota prescribed for the post by the Government.

8. However the fact that though respondents' counsel made a specific statement on 2.2.2006 that they have not appointed any one in group 'D' post and now the stand taken that the posts are filled up for want of any order from this Court is deprecated, as Government is equally bound by its promise and the statement of the Counsel is also a stand of the Government. However the fact that applicants have been paid less though allowed to work for full 30 days and this does not fall within the domain of the executive, which is directed in the context of an order passed, where the directions for regularization has been issued, yet one who works for number of days has to be paid in accordance with the working days.

9. As regards consideration for regularization, as the respondents have themselves admitted to have counted Sundays and paid holidays of applicants while counting number of working days, irrespective of availability of the posts of mazdoors, they shall consider the claims of applicants for regularization in any group 'D' posts available with the respondents.

10. With the aforesaid directions all the MAs mentioned above stand disposed of.


(Shanker Raju)
Member (J)

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