

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 927/2008**

% ***Date of Decision: February 7, 2011***

Union of India *...Petitioner*  
*Through* Mr.V.K.Tandon, Advocate

*Versus*

*Sher Singh* *.... Respondent*  
*Through* Mr.Madan Lal Sharma &  
Mr.VarunNischal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether reporters of Local papers may be allowed to see the judgment?
2. *To be referred to the reporter or not? yes*
3. Whether the judgment should be reported in the Digest? yes

**Veena Birbal, J.**

\*

1. By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for setting aside the order dated 22<sup>nd</sup> February, 2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') in OA No.1000/2006 wherein respondent is given the benefit of O.M dated 7<sup>th</sup> May, 1997 and it is held that respondent is entitled to recategorization as 'Pump Operator' since the post of 'Assistant Operator' had merged on that date with the main category without disturbing the seniority of others who had already been regularized prior to him.

2. Brief facts relevant for the disposal of present petition are

as under:-

The respondent was appointed as 'Assistant Operator' (E&M) as casual worker of Muster Roll on 01.06.1984. The name of petitioner was sponsored by the employment exchange and was selected after following the selection procedure of interview/test under the Recruitment Rules. Since then respondent is continuing without any break with the petitioner. Respondent was granted temporary status on 01.09.1993. On 03.03.1997, the respondent had passed the trade test for 'Assistant Operator'.

On 31.01.1988, an arbitration award was passed in respect of a dispute between the management and employees of CPWD regarding re-classification/re-categorisation of various classified categories of employees. In implementing the award, various categories of employees in work charge establishment were merged with their corresponding main categories vide O.M. Dated 07.05.1997 by the Director General of CPWD. Accordingly, the post of 'Assistant Operator' in work charge establishment was merged with the post of 'Operator' (E&M) and the persons appointment as 'Assistant Operators' (E&M) in work charge establishment at the time of merger were automatically appointed as 'Operators' (E&M) and were given the scale of 'Operator' (E&M). The merger was to be effected in the establishment of work charge establishment and casual workers would find place in work charge establishment only when he has been regularized. By then, the respondent was not regularized, therefore, he remained 'Assistant Operator' (E&M) on a casual basis.

On the implementation of the arbitration award of 31.01.1988

vide O.M. dated 7.5.1997, many persons who were junior to the respondent and had been regularized before 1997 were automatically appointed as 'Operator (E&M)' and were given the pay-scale of 'Operator (E&M)'.

On coming to know of the alleged discrimination, the respondent gave a representation dated 23.9.1997 as to why he had not been regularized whereas his juniors had already been regularized and alleged that the action of the petitioner was discriminatory and violative of Article 14 and 16 of the Constitution of India. Respondent requested the petitioner for regularization from the date his juniors were regularized as Assistant Operator (E&M) and also to appoint him as an 'Operator (E&M)' from the date his juniors were appointed. Respondent was given an assurance that the same would be done but nothing was done. The respondent has given the names of his junior who were appointed as Casual Workers and had been regularized before 07.05.1997 as an 'Assistant Operator' and were later appointed as an 'Operator' on merger on 07.05.1997 in para 4.4. at page 43 of the paperbook.

It is alleged that on 28.11.2001, the S.E. Coordination Circle (Elect.) wrote to all the SE's and EE's informing that the department had created 8982 posts in various categories of Work Charged Establishment and Regular Classified Establishment for regularization of services of daily rated workers appointed before 19.11.1985 as thereafter engagement of daily rated workers was banned. It was further informed that if any such daily wage workers were still left out, their particulars be given by 31.12.2001. The respondent was engaged before 19.11.1985 i.e before the ban was

imposed and despite that no steps were taken to regularize him. Again on 08.03.2002, the SE Coordination Circle (Elect) called for particulars of those 'Assistant Operators' including the respondent for their regularization. The particulars of the respondent were sent but despite that no steps were taken to regularize him. From 1997, the respondent has been making representations to treat him at par with his juniors. Even the respondent sent a representation dated 15<sup>th</sup> September, 2005 through the Union. Left with no option, the respondent had filed a petition before the Tribunal and prayed for regularizing him as an 'Assistant Operators' (E&M) from the date his juniors had been regularized and to appoint him to the post of Operator (E&M).

3. The stand of the petitioner before the Tribunal was that the respondent is a casual worker and as and when his turn would mature, he would be considered for regularization subject to fulfillment of prescribed terms and conditions of recruitment rules and availability of vacancies. It was contended before the Tribunal that the applicant cannot claim regularization as a matter of right and the petition was liable to be dismissed. The further stand of petitioner was that persons referred to by the respondent, who as per him had been regularized, were party to the petition in the Supreme Court/Central Administrative Tribunal and had fulfilled the eligibility criteria as such were regularized. Petitioner had denied that its act in not regularizing the respondent was discriminatory in any manner, as is alleged.

4. The Tribunal had rejected the stand of petitioner and has allowed the OA vide impugned order dated 22.2.2007 granting the W.P.(C) No. 927/2008

following relief:-

“XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Consequently, the O.A is allowed. We direct that appropriate orders are to be issued by the concerned respondents advising the applicant of regularization of his service as Assistant Operator effective from 7.5.1997. As a consequence, we hold that he will be entitled to the benefit of Arbitration Award and the O.M. which followed and will be entitled to recategorisation as Pump Operator since the posts are merged on that date. He will be entitled to the position of seniority commensurate with this declaration and not disturbing those who already stood regularized before him.”

Aggrieved with the same, the present petition is filed.

5. Counsel for petitioner has contended that DPC on 02.06.1997 had found respondent fit for regularization to the post of ‘Assistant Pump Operator’. By then because of implementation of arbitration award vide OM dated 07.05.1997, the category of ‘Assistant Operator’ had merged with that of ‘Operator’ as such respondent could not be considered for regularization to the post of ‘Assistant Operator’. It is contended that the Tribunal has not considered the aforesaid aspect of the matter and the petitioner is justified in not regularizing the respondent. It is contended that there is no arbitrary action in dealing with the claim of the respondent by the Department in any manner.

6. On the other hand, the stand of the respondent is that respondent was appointed on daily wages on 1.6.1984 i.e. prior to ban imposed on recruitment/appointment of daily wagers and fulfils all the terms and conditions of recruitment rules. He had passed the trade test on 3<sup>rd</sup> March, 1997 and was granted temporary status.

His juniors had already been regularized as Assistant Operator prior to 1997 and were automatically appointed as Operator (E & M) on merger of posts of 'Assistant Operator' (E&M) with Operator (E&M), as such the action of the respondent is totally arbitrary and discriminatory and considering the facts and circumstances of the case, the Tribunal has granted relief to the respondent. It is contended that there is no illegality in the impugned order which calls for interference of this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

7. We have heard counsel for the parties and perused the material on record. It is an admitted position that respondent had joined as Casual Worker on the post of Assistant Operator (E&M) on 01.06.1984. It is also admitted position that respondent was appointed before imposition of ban on appointment on daily wagers. On 01.09.1993, respondent had been granted temporary status. It is also admitted position that on 03.03.1997, a trade test of 'Assistant Operator' was passed by him. It is also admitted position that petitioners had issued OM No.17(3)/EC/Coord.Cir(E)/2161 dated 28.11.2001 asking for details of workers for regularization who had been appointed prior to ban imposed on 19.11.1985. Thereafter, another letter dated 08.05.2002 was issued by petitioners to the concerned Executive Engineer for sending the details in enclosed proforma including that of respondent. No reasons are given by petitioner as to why the names including that of respondent were called for regularization after 1997 when as per its stand, post of 'Assistant Operator' stood merged with that of 'Operator' vide OM dated 7.5.1997 as such regularization was

not possible. It is also admitted position that many persons junior to the respondent had been regularized as 'Assistant Operator' (E&M) and after implementation of arbitration award vide O.M. dated 07.05.1997, the persons regularized as 'Assistant Operator' were automatically appointed as Operator (E&M) on merger of post of 'Assistant Operator' with that of 'Operator'. The respondent in the OA before the Tribunal had given the names of 15 persons who were junior to him and were regularized before 7<sup>th</sup> May, 1997 and the same is not denied by petitioner. It is simply inaction on the part of petitioner due to which respondent had not been regularized till date. Petitioner has failed to point out any condition which the respondent does not fulfil for regularization except that when his name was recommended the post of 'Assistant Operator' had merged with that of 'Operator' which itself is not a justified ground as is noted above.

8. The relevant finding of Tribunal on the above aspect of matter is as under:-

“We find it difficult to digest the submissions made, as above. DPC was held on 2.6.1997 admittedly for regularization for the post of Assistant Pump Operator. It cannot be for a posting after the above said date because on 7.5.1997, the post of Assistant Pump Operator and Pump Operator stood merged in view of the Office Memorandum of the above date. A DPC will not be convened without purpose. Therefore, the clearance was for suitability for his being considered for a post, which was there when he passed the test. On 3.3.1997, the applicant has passed in the trade test conducted. He was entitled to be promoted with effect from that date and the delay in holding the DPC could not have been attributable to the applicant at all. There is no case that there was no post available. Having passed the test, the applicant was entitled to be regularized to a vacancy of an Assistant Operator with effect from that date.”

The finding of Tribunal is based on material on record. No

illegality or perversity is seen in the impugned order dated 22<sup>nd</sup> February, 2007.

Considering the totality of facts and circumstances, no case is made out by petitioner which calls for interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merits and the same is hereby dismissed. The parties are however, left to bear their own costs.

**Veena Birbal, J.**

**Anil Kumar, J.**

**February 7, 2011**  
ssb