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

+ **W.P.(C) 6161/2002 & CM APPL. 40742/2019**

JAI PRAKASH & ORS. Petitioners
Through Mr. R.D. Iyer & Mr. Sameer Sharma,
Advocates
versus

DG. OF WORKS , CPWD Respondent
Through Mr. R. V. Sinha & Mr. Amit Sinha,
Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **12.09.2019**

Dr. S. Muralidhar, J.:

1. Eight Petitioners, originally appointed as Beldars in the Central Public Works Department (CPWD), filed the present petition challenging an order dated 20th September, 2002 passed by the Central Administrative Tribunal (Tribunal), Principal Bench, New Delhi in OA No. 55/2002.

2. By the impugned order, the Tribunal disposed of the OA, requiring the Respondent to consider creating posts of Enquiry Attendants within a period of four months and if it was so decided to create such posts, to frame rules for recruitment thereto. The further direction was that after framing such rules, Respondents were to permit the Petitioners to participate in the recruitment process by granting them relaxation in age by the number of years they had discharged the duties of an Enquiry Clerk. This was to be

subject to the Petitioners having been appointed as work charged Beldars within the prescribed age limit for that post.

3. The prayer of the Petitioners seeking regularisation of the services as Enquiry Clerks pursuant to an Office Memorandum (OM) dated 4th July, 1988 and the further prayer for restraining the Respondents from demoting or reverting the Petitioners from the category/grade of Enquiry Clerk pursuant to the OM dated 11th October, 2000 was rejected. Further, the prayer for a direction restraining the Respondents from dispensing with the services of the Petitioners in the category of Enquiry Clerk in view of an arbitration award, read with an order dated 25th September, 1998 of this Court, was also rejected.

4. On 27th September, 2002 while issuing rule in the present petition the Court directed status-quo as regards the status of the Petitioners to be maintained. The said interim order was made absolute on 14th July, 2004. The petition was dismissed for non-prosecution on 8th August, 2017 and the aforementioned interim order was also vacated. Subsequently, on 1st May, 2019 the said order was recalled and the writ petition was restored to file.

5. On 4th September 2019, a few days prior to the present hearing, the Petitioners filed CM No. 40742/2019 stating that one day prior to the interim order dated 27th September, 2002, the Respondents had issued an order dated 26th September, 2002 re-fixing the pay of the Petitioners in the pay scale of Rs. 2550-55-2660-60-3200/-. It is now urged in the present application that the aforementioned order was 'antedated.' It is claimed that the said order

was in fact antedated to make it appear that it was issued prior to the status-quo order dated 27th September, 2002. The said order is now sought to be placed on record with the present petition.

6. Mr. R. D. Iyer, learned counsel for the Petitioners, states that of the eight Petitioners who originally filed the present petition, Petitioner Nos.1 and 6 have expired during the pendency of the petition. Petitioner No.3 retired as Beldar in May, 2018.

7. The Petitioners, who have throughout worked only as Beldar particularly since after the order dated 26th September, 2002 did not choose to file any contempt petition in this Court and have continued to work as Beldars since then. In other words, for the past 17 years, the Petitioners have been working only as Beldars.

8. Reverting to the facts of the case, while Petitioner Nos. 1 and 2 were appointed as Beldar, it is claimed that they were asked to perform the duties of an Enquiry Clerk with effect from 5th May, 1982. Petitioner No. 3 claims to have been appointed as Enquiry Clerk with effect from 25th May, 1991; Petitioner No. 4 with effect from 24th July, 1993; Petitioner No.5 with effect from 5th May, 1993; Petitioner No. 6 with effect from 15th March, 1993; Petitioner No. 7 with effect from 1st January, 1993 and Petitioner No. 8 with effect from 16th February, 1993.

9. Petitioners have relied upon an OM dated 4th July, 1988 issued by the Respondents which states that those muster roll employees who have been

working in the higher category for more than 240 days for two continuative years were entitled to be regularised in the higher category. Accordingly, it is contended that the Petitioners who were initially recruited as Muster Roll Beldars performed the job of the higher category of Enquiry Clerks for more than 240 days for two consecutive years and were accordingly entitled to be regularised as Enquiry Clerks.

10. It appears that there were a number of disputes between the Respondent/CPWD and its workers' union leading to a reference of the disputes under Section 10A of the Industrial Disputes Act, 1947 to the Board of Arbitrators (BOA). The demand of the CPWD Workers Union was with regard to re-categorisation/re-classification of work charged staff and regular classified categories of CPWD analogous to the classification of schedule of employment, as specified in schedule to the Minimum Wages Act, 1948. There was a difference of opinion between the two arbitrators which led to the appointment of an Umpire. The Umpire merged some categories of Assistants with full skilled categories; re-categorised some unskilled workmen as skilled workmen and semi skilled workmen as highly skilled workmen. The Umpire noted as under:

“This shows that creation of posts of Enquiry Clerk is not agitated but a relief is sought in respect of those workmen who have been called upon to carry out the duties of Enquiry Clerk on all the Enquiries of CPWD and that they are not paid due pay and allowances for the job performed by them. The claim and the pleadings further reveal that muster roll employees like Beldars etc. are, deployed or called upon to do the job actually of Enquiry Clerk and such of the workmen are paid wages as admissible to either un-skilled/semi-skilled category, though they are entitled to the payment of wages (time scale of skilled

category which is pre-revised Rs. 260-400) for the jobs performed. I find from the Notification containing Minimum rates of wages that the workers doing the above-mentioned job are classified as 'Clerical' grade. This work is treated as against category of 'clerical' within the meaning of the said notification and that the workmen concerned should be paid accordingly depending upon the qualification of matric and non-matric as the case may be. The employer is therefore duty bound to pay 'clerical' grades to those workmen who are called upon to do the job of enquiry clerk (emphasis in original). The contention of Party No.1 against para 3.7 on page 10 of their statement dated 8th April, 1987 is not correct and I agree with Shri Vats, Brother Arbitrator on this point."

11. While the Award was accepted by the workmen, the Union of India challenged it by filing a writ petition in this Court. The main objections to the Award by the Union of India were as regards two issues, as under:

"(1) a general recommendation that all workmen classified under unskilled should be placed in semi skilled category when the workmen complete five years regular continuous service and

(2) recommendation regarding abolition of trade test in certain categories"

12. The Award was nevertheless upheld by this Court by judgment dated 28th January 1992. Subsequently, the Special Leave Petition (SLP) filed by Union of India in the Supreme Court was dismissed on 12th August, 1993.

13. Since no steps were taken by Union of India to implement the Award, the workers' union filed an application in this Court seeking a direction to the Union of India to implement the judgment dated 28th January, 1992. The said application was disposed of on 25th August, 1993 directing the

Secretary, Ministry of Urban Development (MoUD) to implement the judgment dated 28th January, 1992 on or before 30th September, 1993.

14. The above direction was also not complied with. Three contempt petitions were filed in this Court. In the said petitions, Union of India filed an application seeking further six months' time to give effect to the order dated 25th August, 1993. By an order dated 19th November, 1996 this Court observed that work experience of five years in a particular category did not automatically qualify a person "to go to the higher ladder". It was observed that if the trade test was abolished and the workman was permitted to automatically go to the higher category all incentives for efficiency and excellence would disappear. Accordingly, it was held that the said recommendation in the Award could not be accepted. The Court did not approve the automatic upgradation of a workman from one category to another, like from unskilled to semi-skilled and from semi-skilled to highly skilled, merely because the workmen had completed regular continuous service of a certain number of years, ignoring the requirement of trade test. Although the contempt petition was disposed of on 19th November, 1996, granting CPWD three more months' time to implement the Award, the Court did so observing that the failure to comply with the order dated 28th January, 1992 as modified, would expose the Respondent to revival of the contempt petitions.

15. In 1997, a flurry of applications were filed being CCP Nos. 87 and 106/1997, again alleging disobedience of the aforementioned orders passed by this Court. The CPWD then filed three applications seeking extension of

time by six months to implement the award in terms of the order passed on 19th November, 1996. All these applications were disposed of by a detailed order dated 25th September, 1998 of this Court accepting the stand of the CPWD that after merger of various categories, in terms of the Award, if a workman had to be upgraded to the next higher category in that stream, which has an element of promotion, such workmen had to be subjected to the trade test. The Court expressed the view that all points raised in the affidavit of the employees' union dated 2nd September, 1997 shall be resolved by CPWD in terms of the Award "which has to be accepted and implemented by the CPWD in letter and spirit". It was held as under:

"We find that the Court has disapproved in principle the abolition of trade test wherever it is prescribed for next promotion. We, therefore, accept the stand of the CPWD and after merger of various categories in terms of the award, if a workman has to be upgraded to the next higher category in that stream, which has an element of promotion, he has to undergo the trade test, if so prescribed. We feel that this clarification is in consonance with the two decisions of this Court rendered on 28 January 1992 and 19 January 1996 and hope that it will bring to an end all doubts and controversies in that behalf."

16. Upon failure by the Respondent to regularise the services of the Petitioners in the post of Enquiry Clerk, the Petitioners again filed OA No. 30/2001 in the Tribunal. There was an interim stay in their favour granted by the Tribunal on 4th January, 2001. Subsequently, orders passed by the Respondents on 11th October, 2000 and 13th July, 2000 were challenged in OA No. 143/2001, which stood disposed of by the Tribunal on 1st October, 2001. It was held that the aforementioned two orders dated 11th October, 2000 and 13th July, 2000 did not suffer from any infirmity. The Tribunal also

found “that the pay of the applicants for performing the duty of Enquiry Clerk had already been fixed and they had been paid arrears of pay and allowances in pursuance of the Arbitration Award.”

17. Not satisfied with the above order of the Tribunal the Petitioners approached this Court with Civil Writ Petition No. 6442/2001, which was disposed of by an order dated 20th December, 2001. The thrust of the submissions in the above petition was on the basis of the Arbitration Award dated 31st January, 1988. The Division Bench of this Court then proceeded to observe as under in the said order:

“We have seen the copy of award which was submitted today but have not come across any of its terms directing regularisation of petitioners services as Enquiry Clerks. Confronted with this L/C for petitioners shifted his stand to claim regularisation under Circular dated 4.7.1988 which he claimed to postulate that muster roll casual labour having worked for 240 days in the higher category were entitled to regularisation in that category. We are unable to examine this plea because petitioners' had failed to take it in their OA before Tribunal.

Faced with this L/C for petitioner prayed for withdrawal of this petition with liberty to petitioners to reagitate the matter before Tribunal by taking all available pleas.

Petition is accordingly dismissed as withdrawn with liberty prayed for granted. No plea of limitation shall come in the way of petitioners in approaching the Tribunal again and meanwhile respondents are directed to maintain status quo as on today in respect of their service status for three weeks from today.”

18. Pursuant to the liberty granted by the High Court, the Petitioners once

again went before the Tribunal with the OA No.55/2002 praying for the reliefs as noted herein before. The Tribunal has in the impugned order noted that after the issues arising from the Award were finally settled and clarified by its order dated 25th September, 1998, various orders were issued by the Respondents from time to time.

19. The Tribunal noted that by a circular dated 9th September, 1999 Beldars were classified as semi-skilled with effect from 1st January, 1993 and placed in a new revised scale of Rs.3050-4590/- with effect from 1st January, 1996. This was followed by another circular dated 16th December, 1999 *inter alia* containing a direction to the Regional Officers of the CPWD “not to assign the job of a higher category to a worker in future under any circumstances whatsoever”. A third circular was issued on 13th July, 2000 where *inter-alia* the following direction was issued to the Superintending Engineer, President Estate Circle (CPWD):

“You are requested to enjoin upon all the officer under your Region not to assign the job of a higher category to a worker in future, in any circumstances whatsoever. Any such instance if comes to the notice of this Directorate in future will be viewed seriously and suitable disciplinary action against all such defaulting Officer will be taken for causing financial loss to the Government by wilful disobedience of Govt. orders.”

20. The Tribunal accepted the plea of the Respondents regarding constructive of *res judicata* and observed as under:

“Granting of liberty to the applicants to re-agitate the matter before this Tribunal by relying on the aforesaid Circular of 4.7.1988 cannot be equated with a direction to this Tribunal necessarily to go into that aspect of the matter. We have,

nevertheless, dealt with the question of applicability of the aforesaid circular of 4.7.1988 in paragraph 10 above and have come to the conclusion that the same cannot give fresh lease of life to the applicants claim for regularisation.”

21. It was also noted that from the Award and its confirmation by this Court it was clear that the issue of regularisation as regular Enquiry Clerk was not raised in that forum or decided by it. It was first raised only in OA No. 30/2001 connected with OA No. 143/2001. Although, the Tribunal had dismissed that claim for regularisation by the order dated 1st October, 2001, the Petitioners did not thereafter raise it before the Board of Arbitrators. Invoking principles analogous to Order II Rule 2 of the CPC, the Tribunal held that the Petitioners claim had to be rejected.

22. The Tribunal also analysed the OMs dated 9th September, 1999, 29th September, 1999, 16th December, 1999 and 11th May, 2001. It took the view that in terms thereof it had been made clear that there was no obligation on the Respondents to continue the Petitioners as Beldars and that therefore no fault could be found with the Respondents to discontinue the services of the Petitioners as Enquiry Clerks.

23. The Tribunal also noted the stand of the Respondents that there was no post of Enquiry Clerk in their offices and that the post of clerk/LDC can be filled up only through proper recruitment rules. It was held categorically as under:

“The applicants herein, who are work-charged Beldars, cannot, in the circumstances, be regularised as Enquiry Clerk nor can they be appointed as Clerks/LDCs. According to them, any

attempt to regularise applicants as Clerk/LDC would open flood gates for back door entry in utter violation of Articles 14 and 16 of the Constitution. Furthermore, the respondents have no policy or scheme for the regularisation of Beldars or any other work-charged Group 'D' employees as Enquiry Clerk.”

24. It was noted that the extracts of the CPWD Manual Vol-III 1984 Edition also showed that there was no post of Enquiry Clerk in the establishments. Consequently, it was held that the Petitioners could not be considered for appointment/regularisation in the post of Enquiry Clerk.

25. Dealing with the OM dated 9th September, 1999 the Tribunal observed as under:

“Work charged Beldars performing the duties of Enquiry Clerk with Matriculate qualification were, no doubt, classified as semi-skilled workers by the respondents' Office Memorandum dated 9.9.1999. This would, however, only imply that as long as the work charged Beldars/applicants worked as Enquiry Clerks, they would be entitled to payment of wages in the scale of pay shown in the Annexure to the aforesaid Office Memorandum. There is no implication therein that having been categorised as semi-skilled as above, the respondents will be obliged consequentially to regularise them in the semi-skilled post of Enquiry clerk. The fact of non-existence of posts of Enquiry Clerk will still come in the way thereby defeating the claim of the applicants for regularisation as Enquiry Clerk.”

26. On facts, it was also found that the Petitioners had continuously worked, essentially as Beldars and that therefore they could not claim regularisation as Enquiry clerks on the basis of the circular dated 4th July, 1988 or any other circulars.

27. It was in the above context that the Tribunal by the impugned order granted the Petitioners only the following relief:

“The respondents will consider the matter regarding creation of the posts of Enquiry Attendant expeditiously and take a decision thereon within a maximum period of four months from the date of receipt of a copy of this order. If it is decided to create the post of Enquiry Attendant, the respondents will frame proper Rules for recruitment to the post. Having done that, the respondents will permit the applicants/work charged Beldars to participate in the recruitment process as and when notified by granting them relaxation in age by the number of years the applicants have discharged the duties of Enquiry Clerk by noting down complaints. Their participation in the recruitment process will be subject to the applicants having been appointed as work charged Beldars within the prescribed age limit for that post. No other concession will be extended to the applicants.”

28. Mr. R.D. Iyer, learned counsel for the Petitioner submitted that it was an admitted position that the Petitioners were discharging the duties of ‘Enquiry Clerk’. He referred to Annexure A-5 in the Petition, which is an office order dated 1st September, 2000, whereby the pay of the Petitioners referred to as Beldars was fixed in the pay scale of an Enquiry Clerk with effect from 5th May, 1982.

29. The above orders were taken into account when this Court passed the order dated 20th December, 2001 in W.P.(C) No. 6442/2001, where the question was whether on account of being asked to perform the function of Enquiry Clerks the Petitioners could claim regularisation as such. When it was pointed out by the Court that nothing in the Award directed such regularisation, the Petitioners shifted their stand by claiming such relief in

terms of the circular dated 4th July, 1988. For applicability of that circular it was necessary for the Petitioners to fulfil the conditions set out therein i.e. they should have been muster roll workers who had rendered 240 days' service in two consecutive years. The admitted position is in fact that the Petitioners were all appointed as regular Beldars and that is also the finding of the Tribunal in the impugned judgment.

30. The stand of the Respondents also in the present case in the counter affidavit is consistent with its stand throughout, namely that there does not exist any post of Enquiry Clerk against which the Petitioners can be regularised. It has been stated as under:

“it is reiterated that there does not exist a post of Enquiry Clerk under the respondent nor the petitioners herein were ever appointed as such. In fact, the petitioners were appointed on lower post and they have performed the duties of noting down complaints at Enquiry Offices of CPWD and in view of the award under reference and decisions of the Hon'ble Court(s), the necessary payment has admittedly been made to the petitioners keeping in view the award and decision(s) of this Hon'ble Court. However, it is wrong to say that merely because have done a portion of a job related to higher post and they are having minimum educational qualifications for such higher post, the petitioners are entitled for being absorbed in any higher post which is filled up in accordance with the Recruitment Rules and by the Staff Selection Commission. It is wrong to say that the petitioners are continuing to work as Enquiry Clerk even till date and/or till the filing of the Writ Petition under reply. In fact, the petitioners were discontinued from performing the duties of noting down complaint vide order dated 26.9.2002.”

31. It is on account of the above stand that the Tribunal has, and in the view of this Court, correctly, observed that as and when such post of Enquiry

Clerk is created and rules are formulated for filling up such post, the case of the Petitioners would be considered along with the benefit of age relaxation, provided that their appointment as Beldars was regular and in accordance with the rules. In the considered view of the Court, no other relief could not have been granted to the Petitioners, given the facts and circumstances of the case.

32. Mr. Iyer then, lastly pleaded that even if the Petitioners could not be regularised as Enquiry Clerks, they should not be discontinued as such. It is seen that even according to the Petitioners, the order dated 26th September, 2002 acknowledges them as Beldars and fixes their pay scale accordingly. The admitted position is that they are no longer performing the duties of Enquiry Clerks since that date.

33. The Court, at this point in time, would not like to examine the controversy of whether the said order was antedated, so as to avoid the consequences of the interim order dated 27th September, 2002 passed by this Court. There is no valid explanation offered by the Petitioners as to why they did not bring these orders to the notice of this Court for nearly 17 years. The fact remains that for at least 17 years now, the Petitioners have been working only as Beldars and were not asked to perform the work of Enquiry Clerks. Therefore, the question of restraining the Respondents at this stage from discontinuing giving the work of Enquiry Clerks to the Petitioners does not arise.

34. For all the aforementioned reasons, the Court finds no grounds to

interfere with the impugned order of the Tribunal. The petition is accordingly dismissed. The application is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 12, 2019

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