

(2018) 11 CAT CK 0024

In the Central Administrative Tribunal

Case No : Original Application No. 060, 00227 Of 2017

Bimla Devi

APPELLANT

Vs

Bharat Sanchar Nigam Limited

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 11 CAT CK 0024

Hon'ble Judges : Sanjeev Kaushik, J;P. Gopinath, J

Bench : Division Bench

Advocate : R.K. Bagga, Madan Mohan

Final Decision : Dismissed

Judgement

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 16.12.2016 (Annexure A-10), vide which her claim for payment of actual pay and allowances and other related benefits, consequent upon her regularization as regular mazdoor w.e.f. 9.11.2004, vide order dated 29.6.2013, in the pay scale of Rs.4000-5800, has been declined on the ground that she would be entitled to financial benefits w.e.f. the actual date of joining and not retrospectively.

2. The bare minimum facts, which led to filing of this O.A. are that the applicant was engaged as Sweeper on part time basis in the year 1998, in the erstwhile Department of Telecommunications. A policy dated 16.9.1999, was framed for conversion of all part-time workers / sweepers into full time regular mazdoor, who had completed 240 days in any calendar year. Erstwhile DoT was changed over to Bharat Sanchar Nigam Limited (BSNL) w.e.f. 1.10.2000. Juniors to the applicant were regularized but she was left in lurch. She filed representations including through Union on 9.5.2005 but to no avail. Then applicant filed O.A. No. 50-HR-2009 seeking regularization of her services at par with her juniors which was disposed of on 25.1.2011 with direction to the respondent to consider her case for conversion w.e.f. 9.11.2004, with other part timers were given such

benefit. This order was challenged in CWP No. 7724-CAT-2011 which was dismissed on 3.5.2011. SLP No. 13377/2011 filed by Department was also dismissed on 28.11.2011 by Hon'ble Apex Court. Ultimately, the applicant was converted as casual labour vide letter / order dated 25.2.2012 and she joined her duties w.e.f. 28.2.2012. She was regularized as Casual Labour instead of regular mazdoor, which lead to filing of C.P. No. 17 of 2017. This was dismissed as withdrawn. It is claimed that applicant was hoodwinked to give in writing for withdrawing the C.P. Then order dated 29.6.2013 (Annexure A7) was issued regularizing the applicant as regular Mazdoor in the pay scale of Rs.4000-5800 w.e.f. 9.11.2004 and actual was restricted w.e.f. 8.7.2013, which the applicant terms to be illegal and arbitrary. According to her, she should have been granted actual benefits w.e.f. 9.11.2004 itself at par with her other colleagues. This action of respondents is claimed to be in violation of directions of this Tribunal in earlier lis. The applicant filed a representation and then O.A. No. 060/00749/2016 which was disposed of on 19.9.2016, with direction to the respondents to take a decision on her claim. Ultimately, vide order dated 16.12.2016, her claim has been rejected on the ground that claimed benefit is not admissible as per departmental rules. Hence, the O.A.

3. The respondents have filed a reply. They submit that relief was allowed vide order dated 25.2.2012 (A-4), which order has not even been challenged by the applicant. She was regularized as Regular Mazdoor w.e.f. 9.11.2004 notionally only and paid actual benefits from 8.7.2013 when she submitted her joining report. The applicant herself had approached the court with delay and as such she cannot claim any benefit. She has not challenged orders granting her only notional benefit w.e.f. 9.11.2004 and actually w.e.f. 8.7.2013. The applicant has filed a replication enclosing therewith order dated 9.11.2004 and 26.4.2005 vide which alleged juniors of applicant were appointed on regular basis.

4. We have heard the learned counsel for the parties at length and examined the material on file.

5. Learned counsel for the applicant vehemently argued that once juniors to the applicant have been granted actual benefit from 2004, the same cannot be denied to the applicant, who has been regularized in 2013 as it would amount to discrimination, but the learned counsel for the respondents argued, and with equal vehemence, that the applicant herself has been remiss in claiming the relief at relevant point of time and initiated litigation only in 2009 and ultimately she was appointed on regular basis in 2013, thus, she cannot be granted any benefit since 2004. Her claim is different than other individuals and as such principle of parity would not arise.

6. We have considered the submissions minutely. It is not in dispute that the applicant did not lodge any claim for regularization for a substantial time despite the fact that her juniors were regularized in 2004/2005. She initiated O.A. only in 2009 and the issue came to be finalized after SLP was dismissed by the Hon'ble Apex Court. She was regularized in 2013 and she joined her duties on regular

basis in 2013 and was granted notional benefit from 2004 but actual benefits were restricted to 2013 only. In these circumstances, we do not find any fault in action of the respondents. She cannot claim similarly with her other colleagues who were regularized in 2004/2005 itself. Had she filed case in time, perhaps she would have got the benefit then and there. The claim of the learned counsel for the applicant that the applicant is a poor and illiterate person is not expected to know the nitty-gritty of the legal position, is not tenable as ignorance of law is no excuse and one is expected to be vigilant about his/her rights. Once the applicant has not worked as Regular Mazdoor since 2004, she has rightly been denied benefit of pay and allowances, though she has been given notional benefit. This issue is no longer res-integra and is well settled by law.

7. In the case of VIRENDER KUMAR, GENERAL MANAGER, NORTHERN RAILWAYS, NEW DELHI V. AVINASH CHANDRA CHADHA AND ORS. (1990) 2 SCR 769, it was held on principle of 'no work no pay' that the employees will not be entitled to the salary as they have not actually worked in that post. Similarly, in STATE OF HARYANA AND ORS. V. O.P. GUPTA AND ORS. 1996 (2) SCT 294, the Court observed as follows:-

"This Court in Paluru Ramkrishnaiah v. Union of India) considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virendra Kumar, G.M., N. Rlys. v. Avinash Chandra Chadha."

8. In the aforesaid decision, the Apex Court has distinguished its earlier decision in UNION OF INDIA ETC. V. K.V. JANKIRAMAN, etc. (AIR 1991 SC 2010) as follows:-

"It is true, as pointed out by Shri Hooda, that in Union of India v. K.V. Jankiraman this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

9. Similar view has been taken in UNION OF INDIA VS. B.M. JHA, (2008) SCC (L&S) 399, A.K. SOUMINI VS. STATE BANK OF TRAVANCORE & ANOTHER, 2003

(4) RSJ, Page 622 by Hon'ble Apex Court and our own jurisdictional High Court in LPA Nos. 1258 of 2011 (O&M) titled ASHOK KUMAR VS.STATE OF HARYANA ETC. Decided on 11.8.2011, 2012(1) RSJ 342 and .

10. No doubt, the aforesaid decisions are in regard to promotional / higher posts but the principles laid down would apply on all fours to the facts of this case as well. As applicant was earlier working on part time basis and was regularized as regular mazdoor retrospectively since 2004. Thus, in our view a person will not be entitled to any pay or allowances during the period for which he/she did not perform the duties on a post although after due consideration, he/she was given proper regularization. No employee can be held to be entitled to claim any financial benefits retrospectively. At the most she may be entitled to re-fixation of the salary on the basis of the notional seniority granted to her which has indeed been done in this case.

11. In the wake of aforesaid discussion, this O.A. turns out to be devoid of any merit and as such is dismissed.

12. The parties are left to bear their own costs.