

(2019) 02 CAT CK 0175
In the Central Administrative Tribunal
Case No : Original Application No. 2243 Of 2014

Chaman Lal

APPELLANT

Vs

Union Of India Through

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0175

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : Meenu Mainee, Neetu Mishra, Satpal Singh

Final Decision : Partly Allowed

Judgement

Nita Chowdhury, J

Heard learned counsel for the parties.

2. MA 1872/2014 for joining together in a single Application filed by the applicants is allowed for the reasons stated therein.

3. MA 1873/2014 for condonation of delay in filing this OA is allowed for the reasons stated therein as the applicants, in this OA moved their representations on 2.12.2013 to which the respondents have not given any response, who were re- engaged vide order of the Hon'ble High Court vide order dated 8.6.2012 and are seeking direction to the respondents to treat the period of their earlier service rendered from the year 1988/89 to 1997 as a qualifying service for pensionary benefits and also to give consequential benefit.

4. By filing this OA, the applicant is seeking the following reliefs:-

"8.1 That this Hon'ble Tribunal may graciously be pleased to allow this application and direct the respondents to treat the period of their earlier service from the year 1988/89 to 1997 also as qualifying service for pensionary benefits and also to give consequential benefits.

8.2 Pass any other or further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

8.3 That the cost of the proceedings may kindly be granted in favour of the applicant and against the respondents."

5. The grievance of the applicants in this case is against non action of the respondents to consider and grant the benefit of qualifying service for the period they had worked from January, 1989 to 1997 (8 years) before their services were terminated on the ground that they were appointed by mistake but subsequently, the applicants after intervention of the Court have been re-engaged vide orders dated 6.6.2012 and 8.6.2012 in terms of which they have been given the benefit of re-engagement on the basis of their earlier working but no orders have been passed for treating the earlier period as qualifying service while the applicants are now near their retirement after having fought a long battle to be appointed on the basis of their selection in which they had been found qualified in the year 1988.

6. On the other hand, the respondents in their counter affidavit submitted that on perusal of record, it has been noticed by the department that a panel of 468 candidates instead of 420 was prepared mistakenly in order to merit whereas recruitment for only 420 candidates were to be made in Group D categories which was issued on 30.1.1988 & 3. 2.1988 for making good for short fall of SC candidates in different departments. Department were allotted to the candidates and panel was sent department-wise then it came to light of the department that department wise operation of the panel has resulted in anomaly as senior candidates on the panel has been left out and junior has been given appointment and it is thus the allotment of the panel by the department was concealed through order dated 9.7.1989 and it was decided by the department that appointment to the said was to be made strictly in order of merit as it has been evident that the said appointment has been made contrary to merit position of the candidates concerned.

6.1 They further stated that on scrutiny of merit list, it has been found that 15 candidates have been given appointment inadvertently and as such only candidates who have been appointed after the merit position number 420 has been wrongly appointed which are 12 candidates in number and therefore the said error being committed by the department was to be rectified and a show cause notice dated 9.9.1994 was given to all candidates who had been wrongly appointed as to why their services should not be terminated. The said show cause notice was challenged by the applicants before the Hon'ble High Court by filing writ petitions and the Hon'ble High Court vide Order dated 20.12.2010 was pleased to hold that there is a legitimate expectation on the part of the petitioners to get reemployed with the Railway and it was directed that Railway Board to take a compassionate view and consider their cases sympathetically as per the rules and/or executive instructions etc. governing the matters in hand by accommodating them in Service anywhere in the country, irrespective of

qualification of the petitioners, and also irrespective of the advertisement that related only to the Northern Railway, so that they get opportunity to earn their livelihood.

6.2 They also stated that the respondent department as per the direction of the Hon'ble High Court re-engaged them by DRM Northern Railway vide letter dated 6.6.2012 and they joined their duty in Rohtak Division on 9.6.2012 as a Trackman. They further submitted that in compliance of the aforesaid directions of the Hon'ble High Court, the applicants were re-engaged. Thereafter the applicant made representation that they had already served the department since 16.2.1989 to 9.1.1997 on Group Post and they were given fresh appointment on 9.6.2012 and their previous service of 8 years should be regularized. Since the applicants earlier engagement was not in accordance with rules and merit list, the applicants have no legal rights to seek regularization of the said period for which they are not legally entitled to. As such the applicant's claim is not legally tenable in the eyes of law.

7. Having regard to the submissions of learned counsel for the parties and also having perused the pleadings available on record, we found that the issue in this case is confined with regard to treatment of applicants' earlier period of service rendered by them in this respondents department.

8. The respondents have not disputed the fact of rendering service earlier in their department by the applicants. However, they stated that a panel of 468 candidates instead of 420 was prepared mistakenly in order to merit whereas recruitment for only 420 candidates were to be made in Group D categories which was issued on 30.1.1988 & 3. 2.1988 for making good for short fall of SC candidates in different departments and panel was sent department-wise and thereafter it came to light of the department that department wise operation of the penal has resulted in anomaly as senior candidates on the panel has been left out and junior candidates have been given appointment and, therefore, on scrutiny of merit list, it has been found that 15 candidates have been given appointment inadvertently and as such only candidates who have been appointed after the merit position number 420 has been wrongly appointed which are 12 candidates in number and, therefore, the said error being committed by the department was to be rectified and a show cause notice dated 9.9.1994 was given to all candidates who had been wrongly appointed as to why their services should not be terminated. The said show cause notice was challenged by the applicants before the Hon'ble High Court by filing writ petitions and the Hon'ble High Court vide Order dated 20.12.2010 was pleased to observe as referred to above and in compliance of the said directions of the Hon'ble High Court, the applicants were re-engaged by DRM Northern Railway vide letter dated 6.6.2012 and they joined their duty in Rohtak Division on 9.6.2012.

9. Since the applicants have earlier rendered service for a certain period in the respondents' department and they challenged the show cause notice of termination of their services before the Hon'ble High Court of Allahabad and by

virtue of the said order, the respondents have to re-engage them in service and they were actually re-engaged, the respondents are duty bound to treat the earlier period of service rendered by the applicant in their department as qualifying service for pensionary benefits in view of the Hon'ble Supreme Court judgment in the case of Union of India and others vs. Rakesh Kumar and others (Civil Appeal No.3938 of 2017 decided on 24.3.2017 after elaborate discussion on the rule position as well as of the previous judgments on this issue, including the judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. Vs. Shaikh Abdul Khader (supra) held as follows:-

"55. In view of foregoing discussion, we hold :

i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.

56. In result, all the appeals are allowed. The impugned judgments of Delhi High Court are set aside. The writ petitions filed by the appellants are allowed, the judgments of Central Administrative Tribunal are set aside and the Original Applications filed by the respondents are disposed of in terms of what we have held in para 55 as above."

From the above, it is clear that qualifying service of the casual labour, who granted temporary status and subsequently regularized, has to be calculated as devised by the Hon'ble Apex Court supra. From the counter affidavit, it is clear that respondents have not taken into consideration the said judgment of the Hon'ble Supreme Court on the issue while rejecting the claim of the applicants for regularization of the service rendered by them earlier in their department and as such the pleas raised by the respondents in their counter affidavit are not sustainable in the eyes of law.

10. In view of the above, and for the foregoing reasons, the instant OA is partly allowed with a direction to the respondents to reconsider the case of the

applicants in the light of the aforesaid judgment of the Hon'ble Supreme Court in the case of Union of India and others vs. Rakesh Kumar and others (supra) and pass a reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this Order. There shall be no order as to costs.