

(2021) 10 CAT CK 0021

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 180, 407, 477 Of 2021 In Original Application No. 180, 00176 Of 2019, Miscellaneous Application No. 180, 406, 488 Of 2021 In Original Application No. 180, 00177 Of 2019

Padmini T.K

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Citation : (2021) 10 CAT CK 0021

Hon'ble Judges : P. Madhavan, Member J;K.V .Eapen, Member (A)

Bench : Division Bench

Advocate : Ravi.K. Pariyarath, C.P. Ravikumar, M.K. Padmanabhan Nair

Judgement

K V Eapen, J

1. O.A.No.180/176/2019 & O.A.No.180/177/2019 were disposed of by this Tribunal vide order dated 09.09.2020 with the following directions :

7. Heard Advocate Mr.Ravi K.Pariyarath appearing for the applicants in both the cases and Advocate Mr.C.P.Ravikumar,ACGSC appearing for the respondents in O.A.No.180/176/2019 and Advocate Mr.M.K.Padmanabhan Nair,ACGSC appearing for the respondents in O.A.No.180/177/2019 through video conferencing. It appears from the letter F.No.C-18013/25/2018-Ad.III(B) dated 8.5.2019 produced at Annexure R-1 in both the O.As that the department had sought the list/details of retired/expired Casual Labourers with temporary status who would have been otherwise eligible for regularization under DoPT's Scheme of 1993 ie., under DoPT's O.Ms dated 10.9.1993 and 6.6.2002. This has been issued after noticing that in a case relating to posthumous regularization of one CL-TS late Shri.Kathiresan, DoPT, Department of Expenditure and Department of Pension & Pensioners' Welfare have concurred with the proposal for posthumous regularization of late Shri.Kathiresan, who was granted temporary status with effect from 1.9.1993.

8. In light of the above developments, we direct that the Department may take immediate necessary steps to re-examine the matter of regularization of the service of the applicants in the above O.As in the light of the facts and circumstances indicated in their letter F.No.C-18013/25/2018- Ad.III(B) dated 8.5.2019. This exercise may be completed and a final decision taken in this regard within a period of three months from the date of receipt of a copy of this order.

9. With the above directions, the O.As stand disposed of. There shall be no order as to costs.

2. After this the applicant in O.A.No.180/177/2019 filed M.A.No.180/406/2021 and the applicant in O.A.No.180/176/2019 filed M.A.No.180/407/2021 to implement the order dated 09.09.2020 in the O . A . The respondents then filed M . A . No . 180/488/2021 in O . A . 180/177/2019 and M.A.No.180/477/2021 in O.A.No.180/176/2019 to close the aforesaid M.As. It was submitted by them that in pursuance of the directions issued by this Tribunal the office of the Central Tax and Central Excise, Kochi has issued speaking orders on 30.07.2021, whereby the request of the applicants in the O.As for regularization of their services have been rejected.

3. In response to the M.As for closing the M.A.Nos.180/406/2021 and 180/407/2021, the applicants in the O.As have submitted identical replies that the respondent department without complying with the order passed in its true spirit have filed the M.As seeking closure of the implementation petitions which cannot be allowed. It is submitted that the order passed by this Tribunal was for directing the re-examination of the applicants claim in the O.As on the basis of Annexure R-1. Therefore the Orders of the Joint Commissioner produced rejecting the prayer of the applicants, without disclosing the steps taken based on Annexure R-1, cannot be taken as the compliance of the orders of the Tribunal in the two O.As. It is submitted that the Orders now produced are silent on the outcome of Annexure R-1. It is therefore submitted that it can be safely said that the orders passed are not in terms of the orders passed by this Tribunal and thus the M.As filed for closure are required to be rejected. The respondent department may be directed to implement the order passed in the O.A in its true spirit at the earliest.

4. We heard Shri.Ravi.K.Pariyarath, learned counsel for the applicants in the O.As, Shri.C.P.Ravikumar, learned counsel for the respondents in O.A.No.180/176/2019 and Shri.M.K.Padmanabhan Nair, learned counsel for the respondents in O.A.No.180/177/2019 via video conference. Our directions at Para 8 of the order dated 09.09.2020 were to the Department to take immediate necessary steps to re-examine the matter of regularization of the service of the applicants in the O.As in the light of the facts and circumstances indicated in their letter F.No.C-18013/25/2018-Ad.III(B) dated 08.05.2019. This letter, which has been produced at Annexure R-1 in the O.As refers to the case of posthumous regularization of a CL-TS late Shri.Kathiresan, in which matter the DoPT,

Department of Expenditure and Department of Pension and Pensioners' Welfare appear to have concurred with the proposal for the posthumous regularization of the services of late Shri.Kathiresan who had been granted temporary status with effect from 01.09.1993. The same letter indicated that the JS (Administration) of the Central Board of Indirect Taxes & Customs, Department of Revenue, has directed to include all similar cases for approval of DoPT. It was also indicated that although there is no such instance known for retired casual labourers, the Board may include the names of retired casual labourers as well and submit the same to DoPT for approval regarding their regularization. The addressee of the letter, Director General (HRD), Customs & Central Excise, New Delhi was also asked to furnish details of all retired/expired CL-TS who would have been otherwise eligible for regularization under DoPT's Scheme of 1993 ie. under DoPT's O.Ms dated 10.09.1993 and 06.06.2002. It was also requested to furnish the final list with verified information in the format prescribed at Annexure A to the Board at the earliest.

5. The directions passed in the common order in the O.A was to take immediate necessary steps to re-examine the matter of regularization of service of the applicants in the light of these facts and circumstances of the above letter. We have seen the Orders passed by the Joint Commissioner (P&V) of the office of the Principal Commissioner, Central Tax & Central Excise, Kochi, which is produced at Annexure MA-1 in both the O.As, in apparent compliance of these directions in the O.As. We note that the orders were passed after a personal hearing was given to the applicants in the O.As. It was recorded that the individuals in the O.As did not make any written submissions but orally submitted that they joined in the year 1991 and were granted temporary status with effect from 01.09.1993. The Joint Commissioner has recorded that both the applicants were engaged as Part Time Casual Labourer on a purely adhoc basis by the Department on 01.03.1991 and that they possessed the educational qualification of 8 th Standard in one case and SSLC (failed) in the other case. Both the applicants were given temporary status with effect from 01.09.1993 vide Order No.40/94 dated 11.03.1994. The Joint Commissioner has brought out in his order various policy development relating to engagement of Casual Labourer in Central Government Offices, as reviewed by the Government keeping in view the Hon'ble Supreme Court judgment dated 17.01.1986 in the Writ Petition filed by Shri.Surinder Singh & Ors. v. Union of India. It was recorded that in the period between 01.09.1993 (date from which Temporary Status was conferred) and 17.02.2009 (date from which the DoPT OM came into force forbidding regularizations of Casual Labourers by the Ministries/Departments on their own) both the applicants were considered but were not found eligible for regularization in the erstwhile grade of Sepoy (Group D post), since they did not have the minimum height prescribed as per the Recruitment Rules for the post of Sepoy. They could not either be regularized in the erstwhile grade of Safaiwala (Group D post) due to non availability of sufficient number of vacancies. Further, they were not considered for regularization in the grade of Multi Tasking Staff (MTS) (Group

C post) by the Committee held on 14.10.2014, since one applicant (Smt.P.U.Mallika) had retired on superannuation on 28.06.2013 and the other (Smt.T.K.Padmini) had retired on superannuation on 30.09.2011, ie., prior to the date of notification of the Central Excise and Customs Department Multi Tasking Staff (Group C Posts) Recruitment Rules, 2013.

6. Various other issues are addressed above the Order including the matter of non-regularization of their services in time as per the decision of the Hon'ble Supreme Court in the Uma Devi case. It was concluded that the DoPT Scheme of 1993 ie. O.M dated 10.09.1993 and Scheme of 2006 ie. O.M dated 10.12.2006 did not apply to Part Time Casual Labourers like the applicants. The only reference to the letter referred to in our directions appears at Para 15 of the order, where the following has been recorded in the matter of the applicant, Smt.T.K.Padmini :

"15. On examination of the facts in this case, I find that Smt. T.K. Padmini, CLTS (Retd) had not been appointed against any sanctioned post. Hence, she was not ligible to be considered for regularization with reference to the decision of the Hon'ble Apex Court in the Uma Devi case. It is also clarified in the DoP&T OM No. 49014/7/2020-Estt.(C) dated 07.10.2020 that regularization under Uma Devi judgment was only a one-time exercise. As such, there is no provision in the relevant Recruitment Rules and/or DoP&T guidelines to regularize the CLTS who have retired. As regards Board's letter F.No.C-18013/25/2018-Ad.III(B) dated 08.05.2019, it is pertinent to mention that it has come to the notice of the Board in a case relating to posthumous regularization of a Casual Labourer with Temporary Status, Late Shri. Kathiresan the DoP&T, Department of Expenditure and Department of Pension and Pensioners Welfare have concurred with the proposal for posthumous regularization of Late Shri.Kathiresan (granted temporary status w.e.f. 01.09.1993). Hence, it was directed to include all 'similarly placed' cases for approval of the DoP&T. In response to said letter dated 08.05.2019, the details of such similarly placed cases including that of Smt.T.K Padmini were furnished to the Board. The Board's letter dated 08.05.2019 was only a pan- India exercise to assess the situation of such CLTS and bring to attention any disparity across the Zones of CBIC apart from considering the names of retired/expired CLTS separately for onward transmission to DoPT for regularization."

A similar recording has been made at Paragraph 15 of the Order of the Joint Commissioner in the matter of the applicant, Smt.P.U.Mallika.

7. Accordingly, the Order disposes of the representations received from Smt.P.U.Mallika and Smt.T.K.Padmini and notes that these Orders have been passed in compliance of our directions in our common order dated 09.09.2020 in O.As in so far as it pertains to the applicants. However, we do not find that the Orders meets the directions made by us in the O.As which was basically to re-examine the matter of regularization of the services of the applicants in the light of the facts and circumstances indicated in the aforesaid letter dated 08.05.2019.

As pointed out in the aforesaid letter a case seems to have been made (it is not clear whether this was an exception) for the posthumous regularization of one CLTS late Shri.Kathiresan. The regularization was done with concurrence by the DoPT, Department of Expenditure and Department of Pension & Pensioners' Welfare. Keeping this in view it was requested in the letter to furnish the details of retired/expired CLTS who could have been otherwise eligible for regularization under DoPT's Scheme of 1993. The order passed by the Joint Commissioner dated 30.07.2021 does not make it clear as to what action has been taken after the details of such cases were collected by the Central Board of Indirect Taxes and Customs. It is only stated in Para 15 of the order that the details of such similarly placed cases (including that of the applicants) were furnished to the Board and that the Board's letter dated 08.05.2019 was only a pan-India exercise to assess the situation of such CLTS and bring to attention any disparity across the Zones of CBIC apart from considering the names of retired/expired CLTS separately for onward transmission to DoPT for regularization. Thus, there seems to have been some intention of taking up the cases again with the DoPT, if they were similarly placed etc. Thus, the order of the Joint Commissioner, Kochi is not clear about the action taken by the Board after collecting such information including the information relating to these two applicants. It is seen that our directions in the O.As have thus not been properly carried out. It is for the Board (2 nd respondent) to indicate what further steps have been carried out by them, as envisaged in the letter dated 08.05.2019, which was the main direction by this Tribunal in our common order in the O.As.

8. The order produced is not therefore accepted as compliance of our directions in the O.As. We, accordingly, direct the Central Board of Excise & Customs (2nd respondent) to re-examine the matter of regularization of services of the applicants in the O.As in the light of the facts and circumstances indicated in their letter dated 08.05.2019. They shall file a fresh compliance report before this Tribunal specifying about the action which has been taken in this regard, within a period of three months from the date of issue of a copy of this order. It may be specifically indicated therein whether the cases of the two applicants in these O.As have been considered by the Board and what decision has been taken in their cases, in the light of the letter of the Board dated 08.05.2019.

9. Accordingly, the M.A.No.180/406/2021 in O.A.No.180/177/2019 and M.A.No.180/407/2021 in O.A.No.180/176/2019 filed by the applicants to implement the order dated 09.09.2020 in the O.A, will remain open till the Order as indicated above is passed and produced before us. The M.A.No.180/488/2021 filed by the respondents in O.A.180/177/2019 and M.A.No.180/477/2021 filed by the respondents in O.A.No.180/176/2019 to close the aforesaid M.As for implementation, are not accordingly allowed.