(2019) 05 CAT CK 0105

In the Central Administrative Tribunal

Case No : Original Application No. 317 Of 2018, Miscellaneous Application No. 323 Of 2018

Ramesh Chander APPELLANT

Vs

The Director General And Ors RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Citation : (2019) 05 CAT CK 0105

Hon'ble Judges : Pradeep Kumar Member (A)

Bench : Single Bench

Advocate : B. Rajesh, Ranbir Yadav

Final Decision : Dismissed

Judgement

1. The applicant was appointed as a Daily Wage Electrician with ESIC Hospital on 16.01.1991. He was regularised in due course w.e.f. 28.07.2004.

He retired from service on 30.06.2017. The applicant had pleaded that 50% of his daily wage service prior to regularisation needs to be counted for

his qualifying service towards pension.

The applicant has also pleaded that he needs to be regularised w.e.f. 25.02.2002 when the regular post of Electrician was created or at least from

01.01.2004. This is in the context that with his regularisation w.e.f. 28.07.2004 he is being covered under the New Pension Scheme which came into

force for all those appointed after 01.01.2004 and if he would be regularised prior to this date, he would be covered under Old Pension Scheme.

2. The applicant brought out that despite working for long as a daily wage Electrician, he was not regularised. Feeling aggrieved, he had preferred OA

No.1481/1991, which was decided on 08.05.1992 with the following directions:

â??4. In the above background, we dispose of the application with the direction to the respondents to consider appointing the applicant as Electrician

on regular basis if any vacancy exists and if he is found suitable for such regularisation in accordance with the E.S.I.C. (Recruitment) Regulations,

1965 in all respects. Till then, he shall be continued to be engaged as Electrician on daily wage basis so long as the respondents need the services of

an Electrician. The interim order passed on 2.7.1991 is hereby made absolute with the aforesaid observations. There will be no order as to costs.â??

3. Later on, the applicant pleaded that a regular post of Electrician became available but he was not being regularised. He made a representation for

such regularisation on 21.05.2002 and when this was not acceded to, he preferred another OA No.2662/2002 with a plea to get himself

regularised.This was decided on 09.10.2002. The operative part of this order reads as follows:

â??3. In face of the above said facts, it is directed that the case of the applicant may be considered, in case there is a regular vacancy for the post of

Electrician. Order passed by this Tribunal referred to above must be kept in view while considering the case of the applicant. Decision in this regard

be taken within two months from the receipt of a certified copy of the present order.â??

4. In follow up of directions by the Tribunal, as brought out above, a regular post of Electrician was created on 25.02.2002 and applicant?s services

were regularised vide orders dated 25.08.2004 and this regularisation took effect from 28.07.2004. Feeling aggrieved at such delay in regularisation,

the applicant preferred another OA No.1723/2006 with a plea to regularise him from an earlier date prior to 01.01.2004. Certain orders were passed in

this OA. However, the applicant preferred RA No.160/2007.

This was decided vide orders dated 19.12.2007. The operative para reads as under:

â??3. We have carefully gone through the order dated 9.10.2002 passed by the Tribunal in OA 2662/2002 whereby the respondent authorities were

directed to consider the applicant?s case for regularisation in the event there was a regular vacancy in the post of Electrician. True it is that the

respondent authorities could not comply with the directions of this Tribunal within the time stipulated therein. Instead, they have regularized the applicant from 28.7.2004. But that by itself, does not give rise to a cause of action for claiming regularization from December, 2002. Assuming that the

respondents failed to comply with the directions of this Tribunal, what made the applicant to remain quiet for a period of two years is not explained

here. We only direct that it will be open to the applicant to make a fresh representation highlighting his contentions within two months from the date of

this order, and in that case it is to be disposed of by the concerned respondents in their discretion, and in accordance with law, with some amount of

expedition.â??

5. In compliance to these directions, the applicant made a representation dated 24.01.2008 to regularise him w.e.f. 25.02.2002, the date when post was

created or December 2002 when the two month time limit for compliance of directions as given by the Tribunal, ended (para 3 supra). He made

another representation dated 18.02.2008 for regularisation. These representations were rejected vide orders dated 25/28.08.2009.

6. It was pleaded that there is a scheme under Government of National Capital Territory of Delhi (GNCTD), as seen from MCD letter dated

06.09.2000 as well as from Delhi Jal Board Scheme dated 13.08.2007 wherein 50% of the daily wage service can be counted towards qualifying

service.

Applicant made representations dated 23.06.2014, 27.10.2014, 21.01.2015 and 08.05.2015 for counting such period for him also. The applicant made a

RTI query dated 29.03.2016 in this regard and when this was not replied, he sent a reminder also on 11.05.2016. The RTI query was replied on

20/21.07.2016.

When such daily wage period was not counted, applicant made another representation dated 09.08.2016 in this regard. When his request for counting

of daily wage period was not agreed to, he preferred another OA No.118/2017 which was decided on 11.01.2017. The operative para reads as under:

â??In the circumstances, the OA is disposed of at the admission stage itself without going into the merits of the case by directing the respondents to

consider the Annexure A-1 (colly) representation dated 09.08.2016 of the applicant by passing a reasoned and speaking order in accordance with law

within a period of 60 days from the date of receipt of a certified copy of this order. There shall be no order as to costs.â??

7. In compliance, the matter was considered by the respondents and the request was rejected vide orders dated 20.03.2017. The applicant felt

aggrieved and preferred another OA No.2881/2017 challenging the rejection dated 20.03.2017. This OA was dismissed as withdrawn vide order dated

06.10.2017 which reads as under:

â??Mr. P.M.Saini, learned proxy counsel for Mr. Ranbir Yadav, learned counsel for the applicant, seeks permission of this Court to withdraw this

OA with liberty to file a fresh O.A.

2. On the request of learned proxy counsel for the applicant, the O.A is dismissed as withdrawn with aforesaid liberty. No costs.â??

8. Since his request has not been agreed so far, he is feeling aggrieved and has preferred the instant OA seeking following relief:

â??(a) impugned order dated 20.03.2017 rejecting the representation of the applicant may kindly be quashed.

(b) directions may kindly be issued to the respondents that the applicant may be granted pension as per old pension scheme applicable before

01.01.2004.

(c) direction may kindly be issued to the respondents that the 50% period of service served as daily wager on the post of electrician be counted for the

purpose of pensionary benefits from 06.01.1991 to 27.07.2004 i.e. from date of joining to till date of regularization of service of the applicant.

(d) any other relief as this Hon?ble Tribunal may deems fit and proper.

(e) to award the costs of the case.â??

9. The respondents opposed the OA. It is pleaded that in compliance to the directions by the Tribunal, as brought out by the applicant, the Recruitment

Rules for the post of Electrician were published on 24.02.2001 wherein the age limit was 18 to 25 years. The applicant was 32 years of age (DOB

15.06.1957) when he was initially engaged as a daily wage Electrician in 1991 and accordingly, he was 45 years of age in the year 2002 when the said

post of Electrician was created. He was, therefore, overage and could not have been considered for regularisation.

10. In compliance to directions by the Tribunal in OA No.2662/2002, the proposal for age relaxation was considered in the 159th meeting of ESIC and

a Resolution was passed on 28.05.2003. This needed approval by the competent authority, namely, Ministry of Labour and Employment. This approval was received on 15.09.2003. Thereafter, the Medical Superintendent of the hospital, where the applicant was working, was given directions on

30.09.2003 to initiate the process of recruitment. This reads as under:

â??It is informed that the Standing Committee of ESI corporation in its 159th meeting has approved considering appointment of Shri Ramesh Chander

in relaxation of age limit/educational qualification. The Ministry of Labour, Govt. of India (Central Government), has also approved relaxation of upper

age limit and educational qualification in the case of Shri Ramesh Chander for considering his appointment to the post of Electrician on regular basis.

You are, therefore, requested to consider appointment of Shri Ramesh Chander to the post of Electrician by following the requisite drill of recruitment

i.e. calling application for filling up of the post through open advertisement etc. prescribed in the Recruitment Rules.

Final outcome of the case may be intimated to this office.

A copy each of Agenda note and relevant extract of minutes of 159th meeting of the Standing Committee and Ministry of Labour?s letter, dated

15/09/03, containing Ministry?s approval, are enclosed herewith for information and record.â??

11. It was only subsequent to these directions that the process of recruitment was initiated by calling applications through an open advertisement as

per the Recruitment Rules in force. The applicant was also invited, as by this time the age relaxation etc. has already been obtained. The applicant

was selected based upon an interview and the offer of appointment was issued on 19.07.2004. This offer of appointment very clearly specified that a

New Pension Scheme has come into force w.e.f. 01.01.2004 and candidate can join if such terms and conditions are acceptable. The applicant

conveyed his consent for accepting all terms and conditions vide his letter dated 28.07.2004. This consent letter reads as under:

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â?? : ? ,

? 111P/11/12/16/04-EI(M) 28.07.04

28.07.04 ( )

?â??

12. Once this consent was received, formal appointment letter was issued vide

office order no. 114/2004 dated 25.08.2004. This took effect from

28.07.2004 (FN) and the relevant terms and conditions of this appointment as contained in this order, are reproduced as under:

â??4. He will be governed by the Government of India new Contributory Pension Scheme effective from 1-1-2004 as implemented in the ESI

Corporation.

5. He will be on probation for a period of two years from his date of appointment/ joining.

6. The above mentioned employee has been medically examined by the Competent Authority and declared fit for appointment to the post of

Electrician under ESI Corporation.

7. The appointment of Shri Ramesh Chander has been made after considering grant of relaxation required in the upper age limit and educational &

other qualification given to him by the Standing Committee, ESI Corporation as conveyed vide Hqrs. Office letter No.A-12(11)-1/94-DM(HQ) dated

30-9-2003.â??

13. The applicant had completed his probation on 18/26.03.2008 and retired on 30.06.2017.

14. In view of the foregoing, the regularisation in respect of the applicant needed age relaxation and certain other processes which had taken time.

The applicant was clearly advised of coming into force of a New Pension Scheme w.e.f. 01.01.2004 and he had consented for the same. In view of

this, applicant?s request for treating him to be covered under Old Pension Scheme is not tenable.

In regard to counting of 50% daily wage period, it is pleaded that the two circulars quoted by the applicant (para 6 supra) pertained to GNCTD and

the same are not applicable to ESIC Hospital. Hence this request also cannot be considered and the same is required to be rejected.

15. Matter has been heard at length. Sh. B. Rajesh for Sh. Ranbir Yadav represented the applicant and Sh. A.K.Verma represented the respondents.

16. MA No.323/2018 has been filed seeking exemption in filing original copies of the Annexures. MA is allowed.

17. The facts of this case are not in doubt. They have been recounted as above. The regularisation of the applicant had taken place as a result of

adjudication by the Tribunal at several stages which needed age relaxation, process of selection and by the time this entire process was completed the

New Pension Scheme has already come into force w.e.f 01.01.2004 before the applicant could be regularised w.e.f. 28.07.2004. Accordingly, the

New Pension Scheme shall have to be applied in respect of the applicant.

The aspect of regularisation w.e.f a date prior to 01.01.2004, had come up for adjudication in OA-2662/2002, but was not agreed to (para 4 supra). No

new facts have been brought to light now, warranting any reconsideration. The decision of the respondents to treat the applicant under New Pension

Scheme cannot be faulted.

18. The applicant?s request to consider 50% of the daily wage period towards qualifying service can also not be accepted in view of there being no

policy guidelines in this respect on ESIC. The policy directives of GNCTD cannot be applied upon an organisation like ESIC which does not work

under GNCTD. This aspect had also come up for adjudication earlier in OA 118/2017 (para 6 supra) and in OA 2881/2017 (para 7 supra). No new

facts have been brought to light now, warranting any reconsideration.

Accordingly, the request for counting 50% of daily wage period towards qualifying service, can also not be accepted.

19. In view of the foregoing, pleas put forth by the applicant are not gaining acceptability. OA is accordingly dismissed being without merit. No order

as to costs. Â

