

(2018) 12 CAT CK 0054

In the Central Administrative Tribunal

Case No : Original Application No.330, 00144 Of 2014

Sudheesh Kumar

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0054

Hon'ble Judges : Bharat Bhushan, J

Bench : Single Bench

Advocate : Praveen Kumar Mishra, L.P. Tiwari

Final Decision : Disposed Off

Judgement

1. The instant Review Application (in short RA) has been filed on 16.04.2018 impugning the order dated 15.03.2018 of this Tribunal in OA No. 817/11, copy of which is annexed with the RA. This RA has been filed within the time stipulated under Rule 17 of CAT (Procedure) Rules, 1987. The main grounds mentioned in the Review Application to review the impugned order dated 15.03.2018 of this Tribunal are as under: -

a. The legal question that the juniors of the applicants were regularized through pick and choose policy of the respondents, has not been considered by the Tribunal while passing the impugned order dated 15.303.2018.

b. The submissions made in the written arguments filed by the applicants' counsel in the OA including the order dated 16.04.2015 of this Tribunal in OA No. 792/14 (Amar Singh Jeena & Others Vs. UOI & Others), were not taken into consideration although these were placed on record through written arguments as well as Rejoinder Affidavit. Similarly, other case laws cited on behalf of the applicant were not considered while passing the impugned order.

c. There are vacancies available in the department as per the information received through RTI Act. Hence, regularization of the applicants cannot be

rejected.

d. The department itself declared the applicants to be qualified for the post of Group 'D' employees in the year 2006. This fact was not considered in the order dated 15.03.2018.

e. All the applicants are enjoying the temporary status and their juniors were regularized.

f. In view the judgment in the case of Prem Ram Vs. State of U.P, the regularization of the applicants must be considered in the order of seniority, which was not followed.

g. In the case of State of Karnataka Vs. Uma Devi, the Hon'ble Supreme Court has held that if the daily wager or work charge employees remain continue regularly upto 10 years, then he should not be struck off from the department and the procedure for regularization must be followed.

h. The respondents never raised any objection about the minimum qualification of the applicants for regularizing their services of the applicant.

2. The respondents were issued notice on the RA and they have filed Counter Affidavit objecting to the RA on grounds as under: -

i. Review Application is to be considered strictly under Rule 1 Order 47 Civil Procedure Code (in short CPC) and it cannot be an appeal in disguise.

ii. Hon'ble Supreme Court in the case of N. Anantha Reddy Vs. Ansu Kathuria - (2013) 15 SCC 534 has held that the review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order does not call for review.

iii. The grounds taken in the RA do not fall within the scope of order 47 rule 1 CPC.

iv. Respondents have also stated that the applicants have been given temporary status and as per the guidelines, they are entitled to certain service benefits like wages with reference to the minimum of pay scale for corresponding regular Group 'D' including DA, HRA and CCA. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization. It is further stated that after rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees for the purpose of contribution of the GPF and other related benefits. It is stated that the procedure for filling up Group 'D' post has been followed as per the guidelines.

3. Learned counsels of the parties were heard. Sri Vinod Kumar, learned counsel for the applicant submitted that the question of minimum qualification of the applicants, which was the main ground taken in the impugned order for dismissing the OA, was not raised by the respondents at the time consideration

of the OA. It was also submitted that a number of applicants have possessed the minimum qualification. Sri Vinod Kumar also submitted that in identical cases, the Tribunal has allowed the regularization and the judgment copy was enclosed with the written arguments, which was not considered while passing the impugned order. He submitted that the applicants with temporary status are working since about 22 years and they are entitled for regularization in view of the fact that the juniors have been regularized.

4. Sri V. Swaroop, learned counsel for respondents opposed the claim of the applicants and submitted that there is no error apparent on the face of the record, hence the grounds mentioned in the RA are not maintainable. It was also submitted that the issue of qualification was not the main ground in the impugned order. Learned counsel for respondents drew attention to the judgment of Hon'ble Supreme Court in the case of State of West Bengal and Others Vs. Kamal Sengupta and Another - (2008) 8 SCC 612 and stated that the grounds of review taken in the RA are not maintainable.

5. Sri L.M. Singh learned counsel for the respondents pointed out the relief sought in the OA was not for regularization of service but to extend the benefits of regularization. He argued that the issue of regularization cannot be raised in the RA now.

6. With regard to the submissions of learned counsel for the applicants that the question of minimum qualification was not raised in the OA, it is seen from the counter affidavit filed by the respondent in the OA, it is stated that Group 'D' post have been filled from amongst temporary status staff through selection process. As per the recruitment rules, which was annexed at CA-3 of the counter affidavit in the OA, the age and educational qualification are specified as the criteria for regularization. Hence, although the issue education qualification was not specifically raised by the respondents in their counter affidavit, but the issue of fulfilling the norms as per the rules (which included the education criteria) for regularization was raised.

7. One of the submission of the learned counsel for the applicants that the case laws submitted with the written arguments have not been considered in the impugned order, it is seen that in the written arguments filed by the learned counsel for the applicants on 16.02.2017 has enclosed the order dated 16.4.2015 in the case of Amar Singh Jeena & Others vs. Union of India & Others of Allahabad Bench of the Tribunal and judgment dated 17.4.2015 of Hon'ble Apex Court in the case of ONGC Ltd. vs. Petroleum Coal Labour Union & Ors.

8. In the case of Amar Singh Jeena (supra), the employees of the ICAR under similar circumstances as the applicants in the instant OA had approached the Tribunal for regularization. The reliefs sought for by the applicants in the OA as quoted in the impugned order dated 15.03.2018 are as under:-

"(i). to issue an order or direction in the nature of mandamus commanding the respondents to consider and treat the service of the applicant at par with the

regular Group 'D' employee with all consequential benefits.

(ii). to issue an order or direction in the nature of mandamus commanding the respondents to provide all service benefits to the applicant available to the Group 'D' employee.

(iii). to issue any order or direction as this Hon'ble Tribunal may deem just and proper under the circumstances of the case.

(iv). Award cost of this application to the applicant."

9. It is seen from above, the relief sought for was to treat the services of the applicant at par with the regular employees and there is no prayer for regularization of their services. Hence, the nature of the instant OA is different from the OA in the case of Amar Singh Jeena (supra). Hence, the order in the case of Amar Singh Jeena (supra) will not apply to the present OA. However, the possibility of regularization of services of the applicants has been left open in the impugned order dated 15.03.2018, which states as under:-

"12. In view of above, both the O.As lack merit and are liable to be dismissed. Hence, the O.As are dismissed. However, it is made clear that this order will not be a bar on the respondents to consider regularization of the applicants with approval of the DOPT / Government of India as per the applicable rules, in the light of the DOPT letter dated 16.10.2014 as extracted in para 9 of this order. No costs."

From above, it is clear that the impugned order will not be a bar on the part of the respondents to consider regularization of services of the applicants, which could not have been considered by this Tribunal in absence of a specific prayer to that effect in the OA. It is hoped that the respondents would consider the case of the applicants in this regard as per the existing rules/guidelines of Government.

10. The grounds taken in the RA regarding non-consideration of the judgments cited by the applicants in the OA, cannot be considered to be error or mistake apparent on the face of record and these grounds cannot be considered as valid grounds under Order 47 rule 1 of the CPC for the purpose of considering the Review Application. In this regard, I am in agreement with the arguments advanced by the respondents in the counter affidavit and by learned counsels for the respondents.

11. In view of above discussions, the Review Application No. 18/2018 lacks merit and it is liable to be dismissed. Hence, it is dismissed. There will be no order as to costs.