

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00902/2016

Date of order: 10.02.2020

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Niraj Kumar, S/o Sri Raj Kishor Singh, resident of Village- Pahsara Babhangama,
P.S.- Naokothi, District- Begusarai.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary, Government of India, Ministry of Ayush, INA, GPO Complex, New Delhi-110023.
2. The Under Secretary, Government of India, Ministry of Ayush, INA, GPO Complex, New Delhi-110023.
3. The Director General, Central Council for Research in Unani Medicine (Ministry of Ayurveda, Yuga & Naturopathy, Unani, Siddha and Homeopathy), Jawahar Lal Nehru Ayush Anusandhan Bhawan, 61-65, Institutional Area, Janakpuri, New Delhi-58.
4. The Asstt. Director (Admn), O/o the Director General, Central Council for Research in Unani Medicine, Ministry of Health & Family Welfare (Department of Ayush), Jawahar Lal Nehru Anusandhan Bhavan), 61-65, Institutional Area, Janakpuri, New Delhi- 58.
5. The Dy. Director (I/C)/Officer I/c, Regional Research Institute of Unani Medicine, Patna, Guzri, Patna City, Patna-8.

.... Respondents.

By Advocate: - Mr. Bindhyachal Rai

ORDER
[ORAL]

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for quashing the OM dated 28.11.2016 under the signature of Assistant Director, for Director General Central Council for Research in Unani Medicine, New Delhi (contained in Annexure A/8 series) and to regularize the services of the applicant in the Department against his





post upon which he has been permitted to continue since the last 16 years. The applicant states that he was engaged on daily wage basis as Hindi Assistant in Regional Research Institute of Unani Medicine, Patna (Anenxure A/1) and since the last more than 16 years he is continuing in the Department without any break. He had submitted applications for regularization to his post in the year 2009 which was forwarded to the Delhi office by the Officer-in-Charge, Patna. Though the applicant has been legitimately expecting regularization, he was shocked by the impugned letter, i.e. Office Memorandum dated 28.11.2016 (which was served to him through a letter dated 29.11.2016). The applicant has alleged that such discontinuance is erroneous and unjustified, and hence, this OA.

2. The applicant has also filed a Supplementary Application informing the Tribunal that by another office order no. 313/2016-17 dated 18.01.2017, the applicant has been engaged for a period of six months as Data Entry Operator (Annexure A/9). The applicant claims that this engagement proves the necessity of the post of applicant and also that the purpose and motive of impugned orders at Annexure A/8 series was nothing but an attempt to harm the applicant.

3. A written statement has been filed by the respondents in which they have stated that the applicant was engaged on daily wage basis and till further orders. His further engagement depended upon his performance and was need based. The applicant's claim about any

legitimate expectation having been raised on the basis of such engagement is incorrect. Since the applicant was not holding any sanctioned post, his request for regular appointment cannot be accepted. In view of the existing economic instructions, the proposal to create posts of Hindi Officer/Hindi Assistant/Hindi Translator etc. cannot be acceded to. The applicant has been appointed/engaged as Data Entry Operator (DEO) purely on contractual basis in the Regional Research Institute of Unani Medicine, Patna vide office order dated 18.01.2017 and hence his claim to quash the earlier orders, discontinuing his engagement, has become infructuous and therefore, the OA deserves to be dismissed.



4. The applicant has filed a rejoinder in which he has reiterated his earlier claim and quoted the judgment of Hon'ble Apex Court in Uma Devi case following which a DoP&T OM dated 30th June, 2014 has been circulated, wherein it is stipulated that casual labourers having worked for 10 years or more are to be regularized.

5. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. Learned counsel for the applicant produced decisions of this Tribunal in OA 463/2010 decided on 30.07.2014 (Awadhesh Kumar Singh Vs. UOI) and OA/050/00523/2016 decided on 07.01.2020 (Pramila Devi Vs. UOI). In both these decisions, the Tribunal had directed the respondents to follow the dictum of Uma Devi's case as adopted by the Departments by

their own policy decision. Learned counsel for the respondents argued that the facts of this case differ from the cases cited by the learned counsel for the applicant since there was no post to which the applicant was appointed and his claim for creation of a post of Hindi Assistant is not supported by any of these decisions. Appointment of the applicant as DEO is a recent one (office order No. 313/2017 dated 18.01.2017) and thus there can be no application of Uma Devi's judgment in this case.



4. After going through the pleadings and hearing the arguments, it is clear that though the applicant was, off and on, engaged by the respondents on contractual basis as Hindi Assistant, this was not against any specified posts. It is also true that the officers under whom he worked had recommended for creation of post of Hindi Assistant. However, that request for creation of post was never accepted. After termination of his engagement through the impugned order dated 29.11.2006 he has been reengaged, on contractual basis, as DEO by Office Order dated 18.01.2017. Thus, his prayer for quashing the impugned order is no longer relevant. However, taking into account the undisputed fact that the applicant has been engaged, though on contractual basis, as Hindi Assistant/Data Entry Operator for quite a long time his case deserves to be considered for regularisation as and when there is a post of Hindi Assistant/Data Entry Operator available with the respondents. Therefore, the OA is disposed of with a direction to the respondents to consider the request of the applicant for regular

appointment, in accordance with the judgment in Uma Devi's case and the respondents' own policy in this regard, whenever there is a post of Hindi Assistant/data Entry Operator available. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member

