

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Original Application No.121/2021.

Dated this on the 6th day of August, 2021.

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

1. Shri Naresh K.Solanki,
Son of Shri Karasanbhai Solanki,
Aged about 52 years,
Working as Lower Division Clerk.
2. Yamuna V.Likhare,
Daughter of Shri Vitthalbhai Likhare,
Aged about 54 years,
Working as Lower Division Clerk.
3. Smt.Alpa B.Pandya,
Wife of Shri Brijesh Pandya,
Aged about 46 years,
Working as Lower Division Clerk.

All C/o. I-308, Shrinandnagar Part IV,
Jain Derasar, Sonal Cinema Road,
Vejalpur, Ahmedabad – 380 051.

All Applicants are working under:
The Dy.Director General,
Government of India,
Ministry of Statistics & Programme
Implementation, National Sample
Survey Office,
Data Processing Centre, 7th Floor,
Lilamani Corporate Heights,
Opposite BRTS Bus Stop, Vadaj,
Ahmedabad – 380 013.

...Applicants

(By Advocate Mr. A. L. Sharma)

VS

1. Union of India,
Represented by Secretary
Through the Ministry of Statistics &
Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi – 110 001.

2. The Secretary,
Ministry of Finance, Department of Expenditure,
North Block, Loknayak Bhavan,
New Delhi – 110 001.
3. The Under Secretary,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi – 110 001.
4. The Director General (NSS)
National Sample Survey Office
Sankhiyiki Bhavan, Near Karkardooma Court,
Delhi – 110 032.
5. The Additional Director General
Data Processing Division (HQ)
National Sample Survey Office,
Mahalanobis Bhavan, 164, G.L.T. Road,
Kolkata – 700 108.
6. The Deputy Director General,
Government of India,
Ministry of Statistics & Programme Implementation,
National Sample Survey Office,
Data Processing Centre, 7th Floor
Lilamani Corporate Heights
Opposite BRTS Bus Stop, Vadaj
Ahmedabad – 380 013.

...Respondents

(By Advocate Ms. R. R. Patel)

ORDER(ORAL)

PER: Hon'ble Dr.A.K.Dubey, Member (J)

1. The applicants have filed this OA seeking following reliefs:-

“(A) *The Hon'ble Tribunal may be pleased to quash and set aside order bearing No.A-12034/Misc/2020-Estt/ (Annexure A-1) dated 03.03.2021 in so far as it regularizes the service benefits and service of the applicants prospectively and not protecting the earlier service benefits and service conditions like pay, increment, lien, leaves, GPF, CGEGIS, pension etc., of the applicants, as being violative of Article 14, 16(1) & 21 of the Constitution of India; illegal, arbitrary, and in utter violation of principles of natural justice, null and void.*

- (B) *Be pleased to quash and set aside consequential order dated 17-3-2021 whereby they pay of the applicants is fixed at the minimum (Cell 1) in the level-2 of Pay Matrix of the 7th CPC with effect from 15-7-2020 being illegal arbitrary discriminatory, unconstitutional and contrary to settled legal position.*
- (C) *Be pleased to issue such writ, order or direction to the Respondents to regularize the services of the applicants from the date of their initial appointment and to extend to them all the service benefits protection at par with regular employee including arrears of Pay & ACP/MACP and other benefits such as pension under Old Pension Scheme, Gratuity, Provident Fund etc.*
- (D) *Be pleased to allow this application with costs and be pleased to quantify the cost.*
- (E) *Be pleased to grant such other and further reliefs as may be deemed just and proper by the Hon'ble Tribunal in the facts and circumstances of the case."*

2. The applicants are aggrieved by the impugned order dated 03.03.2021 (Annex.A/1) by which they were regularized as Lower Division Clerk (Level 2 of pay matrix) with effect from 15.07.2020 due to which their past services had been washed off and their pay was fixed at minimum of the scale without protection of pay that they were receiving prior to the date of regularization, resulting into financial loss to them.

2.1 Applicants say is that they were appointed on contract basis on temporary post of Lower Division Clerk in 1996/1999 at the applicable salary, scale, allowances etc., for the period specified in the appointment offer letter (Annex A/2 Colly). They were also allowed revised pay scale on implementation of the 6th pay revision w.e.f. 1.1.2006, vide order dated 24.02.2009 (Annex.A/3).

2.2 Applicants had earlier approached this Tribunal vide OA No.447/2013, OA No.1/2014, OA No.6/2014 and OA No.9/2014 whereupon this tribunal's vide order dated 18.07.2014, disposed off these OAs in terms of direction of Bangalore Bench of this Tribunal in OA No.339/2011 on 04.04.2011 which was upheld by the Hon'ble High Court of Karnataka in OP No.57381/2013 & WP 8010-8035/2014 on 22.04.2014. Against this tribunal's order dated 18.07.2014, the respondents herein went to Hon'ble Gujarat High Court but Hon'ble High Court was pleased to dismiss it saying that if the respondents wished to have the order distinguished, they should have approached the tribunal for review. Then the respondents went to Hon'ble Apex Court through SLP but Hon'ble Apex Court dismissed the SLP as withdrawn since the respondents wished to file review petition before this tribunal. Eventually, the respondents did file review petition which was dismissed by this tribunal vide its order dated 30.03.2017. Again the respondents filed a writ petition before Hon'ble High Court of Gujarat which dismissed it on 20.03.2018. Respondents filed SLP before Hon'ble Supreme Court which was dismissed too.

2.3 Apart from the rounds of litigation that eventually resulted in this tribunal's order dated 18.7.2014 having attained finality and therefore the ratio had to be followed, it has also been stated that the order of Bangalore Bench of this tribunal too was challenged in Hon'ble Karnataka High Court which upheld the first relief granted vide para 31(1) of the tribunal's order dated 16.01.2016.

- 2.4 Applicants have averred that guidance could come from judgment of Hon'ble Gujarat High Court in Vipulkumar A Parekh & 4 Ors v. State of Gujarat & Ors. in SCA No.1314/2009 that if a law on a particular point is laid down by the High Court, it must be followed by all authorities and tribunals in the State. Applicants also plead that following Hon'ble Apex Court's decision in Uma Devi Case, regular service benefits should be granted to the temporary employees having been appointed against sanctioned post.
3. Respondents have filed their reply. Their main contention is that the applicants were earlier employed on contract for a limited period with clear stipulation that the service would terminate at the end of the contract. They have also referred to the order of this tribunal which relied upon the order of the Bangalore Bench of this tribunal and the succedent round of appeal before Hon'ble High Court and finally before Hon'ble Supreme Court. It culminated in filing of RA in 2017 which was dismissed. It is subsequent to all these that the service of these contractual employees (44 out of 46) were regularized (Annex.R/2). Respondents contend that with this regularization, the direction of this Tribunal has been complied with. Of the two contractual employees not regularized, one attained 60 years of age and the other died; except these two, all the 44 contractual employees' services were regularized. Regularization was against temporary posts and on a temporary basis whereafter the pay of applicants was fixed as per rules, i.e. in terms of memo dated 03.03.2021. Respondents contend that the posts were created for temporary project and continued from time to time; these were not the "plan post" and hence this Tribunal's order was not applicable.

Respondents have also relied on Hon'ble Supreme Court's order in Umadevi case 2006 SCC (L&S) 753 in which it was held that ordinarily it was not proper for courts to direct absorption in permanent employment if those were engaged without following due process of selection envisaged in the constitutional scheme. Respondents contend that in this case, regularization of adhoc or contractual employees was just a one time measure. However, the services of the applicants have since been regularized in compliance of the impugned orders (Annex.A/1 Colly) and their pay was fixed as per rules.

- 3.1 Respondents have relied on the order of Hon'ble High Court of Chattisgarh that regularization would take effect from the date of issue of the order of regularization and a daily wager cannot claim regularization with retrospective effect. Similarly, Hon'ble Supreme Court had held in Vijay K.Dhand & Ors. vs. State of Punjab & Ors. reported in (2004) 13 SCC 707, that claims of regularization from the date of initial appointment cannot be ordered if there are no specific instruction regarding date of regularization. Similarly, Hon'ble Apex Court had held in State of Mysore v. S.V.Narayanappa [(1976) 1 SCC 128] that it was a misconception to consider regularization to mean permanence; if appointment was in infraction of rules, it cannot be regularized. Hence, claim of employment from the date of initial appointment was untenable. Respondents rely on recent judgment of Hon'ble Apex Court in Union of India & Ors. v. Sheela Rani [(2007) 15 SCC 230] that regularization should be prospective; it should not be retrospective. In yet another case, Punjab State Electricity Board & Ors v. Swaran Singh [(2005) SCC 246], Hon'ble Supreme Court

held that subsequent regularization does not entitle regularization from earlier date when incumbent was appointed on adhoc basis.

4. Petitioners have filed their rejoinder reiterating their prayers and grounds thereof. In particular, they have quoted order of Hon'ble High Court of Himachal Pradesh in CWP 2411/2019 and matters where Hon'ble High Court had directed to count the contractual period towards qualifying service for particular benefits.
5. Heard the counsel for respective parties. It follows from the documents and materials brought before us that the applicants who were initially engaged on contract for a limited period and the contract continued, were ordered to be regularized vide impugned orders at Annex.A/1 (collectively) in obedience of this tribunal's order dated 18.07.2014 which was based on the tribunal's Bangalore Bench order dated 18.07.2017 which in turn was based on this Bangalore Bench order dated 04.04.2011 in OA 339/2011. Bangalore Bench of this Tribunal had in its order dated 19.01.2016 in OA No.385/2015 to 428/2015 had allowed not only the regularization but also the benefits of seniority, pension under old scheme ACP etc.
- 5.1 We also see that this tribunal's order under reference was challenged in Hon'ble High Court of Gujarat and finally before Hon'ble Apex Court whereafter the respondents filed review application as mentioned in the foregoing paragraphs. It has also to be borne in mind that the order of this tribunal's Bangalore Bench was partly allowed i.e., to the extent of regularization only; retrospective employment, seniority, old pension scheme, ACP etc. were not granted by Hon'ble High Court of Karnataka in its order dated

23.03.2021 in WP 4712/2016 (S-CAT) with WP No.7414/2016 (S-CAT). In other words, Hon'ble Karnataka High Court had initially stayed other reliefs (except/regularization) granted by this tribunal's Bangalore Bench in its order on 02.02.2016 but vide its order dated 23.03.2021, it finally disallowed it. Order of this tribunal therefore has to remain confined to the above extent.

6. We have gone through the records and documents presented before us. The law laid down by Hon'ble Apex Court in Uma Devi case (supra), Sheela Rani case (supra) and Punjab State Electricity Board and Ors. v. Swaran Singh case (supra), and the order of Hon'ble Karnataka High Court dated 23.03.2021 in WP No.4712/2016 & WP 4714/2016 (S-CAT) offer valuable guidance apropos of the prayers of the applicants herein. The relevant part of the order of Hon'ble Karnataka High Court dated 23.03.2021 referred above reads as under:-

“In the considered opinion of this court, once the initial appointment was on contractual basis, which was not done pursuant to the recommendation of the Staff Selection Commission, the question of granting the benefit of seniority right from the inception in service and service benefit does not arise and therefore, to that extent, the order passed by the Central Administrative Tribunal requires to be set aside. As the respondents have been regularized only in the year 2015, they shall be entitled for all consequential benefits and the regularization of service w.e.f. 1.4.2015. So far as the protection of pay is concerned, it is a genuine prayer and therefore, their pay shall be protected while fixing it under the pay scale as provided in the order dated 01.04.2015.”

7. In our opinion, above ruling is fully applicable to the present case and the applicants are entitled to pay protection. Accordingly, we direct the respondents to fix up the pay of the applicants afresh, after taking

into account the last pay drawn by them immediately before the date of their regularization, so as to protect their last pay drawn immediately before their regularization. Other benefits such as seniority from earlier date and service benefits from retrospective dates are declined because in their cases, their regular services starts from the date of regularization only. The OA is therefore, partly allowed to the above extent. No Costs.

(A.K.Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member

SKV