

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 485 of 2018

Reserved on 7.1.2020.

Pronounced on 25/2/2020 February, 2020

Hon'ble Ms. Jasmine Ahmed, Member - J

Hon'ble Mr. Devendra Chaudhry, Member - A

S. Sunanda, aged about 49 years, W/o Shri P.S Jaya Sankar, R/o D-4/2 Indira Gandhi Rashtriya Uran Akademi colony, Fursatganj, Airfield, Amethi. Applicant

By Advocate: Sri Anupam Verma

Versus

1. Union of India through Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-03.
2. Chairman, Indira Gandhi Rashtriya Uran Akademi, Fursatganj Airfield, Amethi - 229302.
3. Director, Indira Gandhi Rashtriya Uran Akademi, Fursatganj Airfield, Amethi - 229302.

..... Respondents

By Advocate: Sri O.P. Srivastava, Senior Advocate assisted by Ms. Preeti Kashyap for R-2 and Sri Yogesh Chand Bhatt for R-1

O R D E R

By Ms. Jasmine Ahmed, Member - J

The present Original Application (OA) has been filed challenging the letter dated 26.05.2016 (Annexure-1) vide which as per applicant, the services of the applicant have not been regularized even after continuous service of more than 10 years. The applicant has also consequentially sought payment of salary and allowances etc as from January 2017.

2. It needs to be pointed at the outset that the applicant had firstly filed a Writ Petition No 2817/2017 in the Hon High Court challenging an order dated 26.12.2016 by which the applicant had been informed of her forthcoming termination of contract on 31.12.2018 with the respondents. The Hon High Court vide order dt. 08.02.2017 first issued notice to the respondents evenwhile directing that no fresh recruitment shall be made on the post of Telephone Operator. This writ petition came to be listed again eventually on 10.01.2018 wherein, on the basis of alternative remedy, qua the relief claimed by the applicant, the Hon High Court

directed the applicant to approach the Tribunal within two weeks and accordingly disposed of the Writ Petition (WP). In pursuance thereof, the applicant filed an OA No 33/2018 in this Tribunal which was listed interalia on 18.09.2018 on which date this Tribunal passed the following order:

"The applicant seeks permission to withdraw this petition enabling him to file afresh for the same cause of action, which is not opposed by the respondents' counsel. Accordingly, the O.A is dismissed as withdrawn."

3. In pursuance of the aforesaid order, the applicant filed the current OA No 485/2018 challenging the order dated 26.05.2016 and praying for regularization of her services with the respondents as also payment of her salary and all other allowances for the period commencing from January 2017 from the date of discontinuation of her services to the date of joining in anticipation. The OA was heard on 11.12.2018 based on which an order was pronounced on 24.01.2019 whereby the OA was dismissed on the grounds of limitation as also on merits.

4. Assailing this order, the Applicant filed a Review Application No. 06 of 2019 stating therein that the OA was heard on 11.12.2018 only on the question of interim relief, however, mistakenly, the judgment and order dated 24.01.2019 has been pronounced as a final order instead of being an order on Interim Relief (IR). That, this order has therefore, deprived the Applicant of an opportunity to file Rejoinder reply, which was not filed just because the matter was being heard on IR only. Taking into consideration, that the contention of the Applicant was having force, the Review Application was allowed vide judgment and order dated 20.08.2019 of this Tribunal and an opportunity granted to the Applicant to file Rejoinder.

5. This 20.08.2019 (*supra*) order of the Tribunal was challenged by the Respondents through a Writ Petition No. 25332 (SB) of 2019 before the Hon'ble High Court. The Hon'ble High Court disposed of this WP finally vide judgment and order dated 06.01.2020 directing that no interference was called for in the order dated 20.08.2019 of this Tribunal. The Hon'ble High Court further directed that this Tribunal should make all efforts to decide the OA after providing proper opportunity to the parties to present their case expeditiously. It was also made clear that the Hon'ble High Court has not adjudicated the claim of the petitioner on merit. In accordance with the order of the Hon'ble High

Court dated 06.01.2020 (*supra*), the parties have been given opportunity to present their case expeditiously. After filing of all pleadings including Rejoinder by the applicant, the OA was finally heard on 07.01.2020. Accordingly, we have heard both the parties at length and perused the material on record carefully.

6. In the OA, the Applicant has prayed for the following relief(s):

- (i) *To quash letter No. IGRUA:PF: 2016-17:238 dated 26 May 16 (Annexure no. 1, page 35) vide which the services of the applicant has not been regularized even after continuous service of more than 10 years and meeting all conditions of para 53 of case of Umadevi (*supra*).*
- (ii) *To direct respondents to regularise services of the applicant as per the law laid down by Hon'ble Supreme Court in *Uma Devi* (*supra* 2006), *M.L. Kesari* (*supra* 2010) and *Shiv Narayan Nagar* (*supra* 2017) as applicant meeting all the requirements of Para 53 of *Umadevi* (*supra*) with all consequential benefits.*
- (iii) *To direct respondents to permit applicant to continue her services and to pay salary and all other allowance etc. as applicable for the period commencing from Jan 2017 (date of discontinuation of service) to date of joining consequent to the order passed by this Hon'ble Court.*
- (iv) *To issue any other order or direction which this Hon'ble Court may deem, just and proper in the nature & circumstances of the case as the applicant had to face irreparable personal/professional/social/financial loss due to acts to respondents through incompetent authority on the dignity of the applicant.*
- (v) *To pass any such other order or direction which is just in the present circumstances of the case.*
- (vi) *Allow the cost of this application to the applicant."*

7. The case of the applicant in brief is that she joined as Telephone Operator w.e.f. 06.08.2008 on contract basis with IGRUA in pursuance of the letter dated 05.08.2008 of the respondents. That, with the passage of time, the applicant's term was being extended from time to time. In the latest, a letter dated 26.05.2016 was issued to the applicant which extended the contractual employment of the applicant till 31.12.2016 (Annexure-01) whereafter the applicant's services were discontinued in an arbitrary manner evenwhile one Smt Vidya was retained as Telephone Operator eventhough she had been engaged to work as Assistant Librarian. That, this action of the respondents was arbitrary. Moreso, when the applicant had been working for more than 10 years as a Telephone Operator with the respondents, she is entitled to be regularized in the IGRUA. The Applicant also filed a Written Argument dated 22.10.2009, wherein, it has been submitted in Para-2 that, as per

data provided under RTI, Smt. Vidya is employed as Assistant Librarian. That further, the services of the applicant were utilized exclusively for the duties of Telephone Operator in IGRUA by the Respondents as is clear from the Attendance Record document pertaining to January 2012. It has also been submitted in the Written Argument that the applicant is entitled to be regularized because, as per communication dated 7th July, 2017 [(Annexure-5 to the Written Argument), which is a letter between one C.P. Randev, Manager, HR on behalf of the Director to Section Officer, Government of India, Ministry of Civil Aviation], it is said in para-7 of the aforesaid letter that in IGRUA there is no difference between a permanent employee and contractual employee. That this implies that the applicant has to be treated as permanent employee and not merely a contractual employee, moreso, in light of the judgment and order the Hon'ble High Court of Allahabad dated 02.08.2004 in the matter of Uday Pratap Singh Vs. Adyaksh, Nagar Palika. Therefore, the services of the applicant cannot be terminated as done by the respondents. A bunch of further additional written arguments have been filed (vide stated Compilation-II) in which, various averments have been made regarding status of IGRUA and the performance of the applicant being up to the mark, as also documentary evidence in support of the averment that the applicant's services have been wrongly done away with. A number of citations have been made, the sum and substance of which is to support the averment that the applicant's services have been discontinued in arbitrary and illegal manner. The citations as stated are as follows:

- (i) Salimali Center For Ornithology Vs. Dr. C. P. Geevan,
- (ii) Gridco Limited and Anr Vs. SadanandaDoloi&OrsDevDutt Vs. Union of India;
- (iii) DevDutt Vs. Union of India and Ors;
- (iv) Anil Kumar Vs. Union of India and Ors.
- (v) Kamataka State Private College Vs. State of Karnataka and Ors;
- (vi) The Joint Action Committee of Airlines pilots Associations of India and Ors. Vs. the Director General of Civil Aviation &Ors;
- (vii) Madan Kumar & Others vs. D.M. Auraiya and Others;
- (viii) Mohd. Abdul Kadir and Anr. Vs. Director General of Police, Assam and Ors;
- (ix) Abhinav Chaudhary&Ors. Vs. Delhi Technological University and Anr;

The Applicant has also taken support of the pronouncement of the Hon'ble Apex Court in the matter of Narendra Kumar Tiwari vs. State of Jharkhand (judgment and order dated 01.08.2018) and Union of India vs. SantLal judgment (order dated 8.1.2019) on the issue of regularization. The applicant has thus tried to submit that she is liable to be regularized by the respondents in light of all the above citations and facts submitted above.

8. *Per Contra*, the respondents have contested the claim of the applicant by filing detailed their Counter reply wherein it is firstly submitted that the discontinuation of the services of the applicant are as per the engagement letter of the applicant and so no irregularity or illegality has been committed and so there is no case of the applicant for any continuation. It is further submitted that the OA is further liable to be dismissed on account of several other reasons. For this, the first leg of the argument of the counsel for the respondents is that the applicant has approached this Tribunal with a fresh cause of action qua OA 33/2018. That this anomaly is evident from the fact that, the applicant, herein, has challenged the order dated 26.5.2016, which was not impugned in O.A. No. 33 of 2018 and since vide order dated 18.09.2018, this Tribunal gave liberty to agitate by way of filing fresh O.A on the same cause of action, therefore the OA is liable to be dismissed on this count. The second leg of the argument as submitted by the counsel for the respondents is that while the applicant has challenged the letter/order dated 26.5.2016 in this O.A. 485/2018, it is self-evident that the OA itself is therefore filed after more than 2 ½ years of the said order and that too without any application for condonation of delay and as such on this count also, the O.A. deserves to be dismissed. The third leg of the argument by the Learned Senior counsel appearing on behalf of the respondent no.2 concerns limitation of filing of the current OA and for this purpose he has also relied upon various judgments of Hon'ble Supreme Court as well as Hon'ble High Court on the point of limitation. Thus it is averred finally that for all the above reasons, the OA needs to be dismissed.

9. Based on the contesting submissions, the key issues for consideration are:

- (i) Whether or not the services of the applicant have been discontinued as per terms and conditions of engagement;
- (ii) That whether the OA is liable to be dismissed on grounds of being at variance with the liberty granted in the OA 33/2018 by this Tribunal vide order dated 18.09.2018;

- (iii) That whether the OA is liable to be dismissed on grounds of lack of addressing the delay in filing of the OA itself qua the impugned order/letter;
- (iv) That whether the services of the applicant ought to have been regularised as prayed in the O.A. moreso, can any regularization prayer be considered by this Tribunal without submission of any application by the applicant in this regard before the authorities concerned/respondents earlier.

10. For this purpose, it would be well that we begin with the issue of the appointment of the applicant itself. Inorder to deal with this issue, it would be just and proper to reproduce the conditions of employment in the Contract engagement letter of 05.08.2008 employing the applicant (Annexure-17). Same is accordingly reproduced hereunder for ready reference:

- "(a) This contractual appointment will be valid for a period of six months w.e.f 6th Aug 2008 to 05th Feb 09. This contractual appointment would automatically lapse on completion of six months.*
- (b)*
- (c) During the period of contract, you will be paid a consolidated salary of Rs. 4000/- (Rupees Four thousand only) per month. In addition, you will not be entitled to any allowances or benefits, facilities etc. applicable to regular employees of the Akademi.*
- (d) This contractual appointment can be terminated by giving fifteen days notice or Rs. 2000/- (Rupees Two Thousand only) in lieu thereof, on either side."*

In continuation of above it would be just and proper to also reproduce abstracts of orders dated 26.05.2016 (impugned order) and 26.12.2016. Same are reproduced below accordingly:

Order dated 26.05.2016:

*"Smt Sunanda
Telephone Operator
Emp Code 256
IRGUA*

विषय: संविदा अवधि के विस्तार के सम्बन्ध में।

आपकी संविदा नियुक्ति की अवधि 31 दिसम्बर 2016 तक बढ़ाई जाती है पूर्व नियुक्ति पत्र में निर्दिष्ट व संशोधित अन्य नियम व शर्तें अपर्वतनीय रहेगी।

इस संविदा नियुक्ति को किसी भी समय बिना कोई कारण बताये समाप्त किये जाने का अधिकार अकादमी के पास निहित है।

(विनोद कुमार वर्मा)

निदेशक"

Order dated 26.12.2016

"Smt Sunanda,
Telephone Operator
Emp Code 256
IGRUA

Please refer our letter no. IGRUA HR:2016-17/38 dated 26 May 2018.

2. *It is to inform you that your contract with IGRUA expires on 31 Dec 2018. You are therefore, requested to finish your clearance at the earliest so as to enable us to clear your dues at the earliest. The enclosed Clearance form should be submitted to the Finance Department with a copy to the Human Resource Department after obtaining clearance from various departments.*

(C.P. RANDEV)
Manager-HR"

11. From the above three orders viz 05.08.2008, 26.05.2016 and 26.12.2016 it is clear that first of all there was a contractual engagement in 2008 which over the passage of time was extended from time to time. That vide letter dated 26.05.2016, it was informed to the applicant that her extension would be only upto 31.12.2016 and finally vide order dated 26.12.2016 applicant was informed about the forthcoming expiry of contract on 31.12.2016. That, there was no further extension of contract period after 31.12.2016, and so the contractual employment of the applicant got discontinued after 31.12.2016. From the above it is also clear that the applicant has been engaged only on contractual basis for a period of six months at a time, though the same has been got extended on account of exigencies of service (on the basis of need). The applicant's claim is that there has been a regular post against which she has been engaged is not adequately substantiated. The fact remains that the employment of the applicant was on consolidated monthly pay and no regular scale of pay has been made available to her, which is very much evident from the letter dated 5.8.2008 above, wherein in para 'C' it is categorically mentioned that -

"During the period of contract, you will be paid a consolidated salary of Rs. 4000/- (Rupees Four Thousand only) per month. In addition, you will not be

entitled to any allowances or benefits, facilities etc. applicable to regular employees of the Academy." Para 'D' of the said letter dated 5.8.2008 provides that "this contractual appointment can be terminated by giving fifteen days notice or Rs. 2000/- (Rupees Two Thousand only) in lieu thereof, on either side."

Thus we are inclined to agree with the position that the engagement of the applicant was purely contractual and could be terminated as per terms and conditions of the contract letter. It is further argued by the respondents that the applicant is not the only one who has been disengaged and that the disengagement has been done for cogent reasons. On this point we find that it is clear from the records that the applicant's was not a lone case where the services of the applicant have been discontinued. This is because, vide order dated 6.8.2005, three persons got contractual engagement in which the applicant secured third position in order of merit, which could be seen from Annexure A-16 (page 135 of the O.A.). That all three persons, who were engaged on contractual basis to the post of Telephone Operator were continuing by extending their term after expiry of every six months. That however, as per respondents contention, in view of the fact that due to technological advancements in the telecom division, need of three Telephone Operators not being there, two of the three had been discharged on the basis of comparable merit/performance which included the applicant, who stood at third position. Thus it is not a case of solitary discontinuation of the applicant. Inorder to support this submission, the learned counsel for the respondents has drawn our attention at page 26 (Annexure C-2) filed with CA which is a letter dated 25.10.2016 and the same is quoted below:-

"Presently the Telephone exchange has two units one located in the residential side in the old admin building and the other unit is located in the Server room in the new AME School building in the Airport area adjacent to the engineering hangars. The complete EPABX system has been upgraded from what it was in the past in order to incorporate all advanced features and to bring in complete automation so that it requires bare minimum manpower to handle and operate the system. In the past we had three operators and one lineman as mentioned in your IOM but with these developments we require only one dedicated operator at the Operator's Console during office hours and one lineman to look into the field work pertaining to serviceability of lines, cables and telephone instruments."

It is argued that it is on the basis of above aforesaid letter dated 25.10.2016 written by Chief Engineer, that, the letter dated 26.10.2016 was issued to the applicant whereby the services of the applicant have been discontinued. We find sufficient justification in this averment of the respondents and therefore are of the considered view that the challenge by the applicant against her disengagement cannot stand legal scrutiny as per above reasoning and documents.

12. As regards the second issue, admittedly, vide order dated 18.9.2018 in the OA No 33/2018, this Tribunal gave an opportunity to the applicant to file a fresh O.A. with same cause of action. However the fresh OA viz current OA No 485/2018 has not assailed the order dated 26.12.2016 which was assailed in the OA 33/2018 but has challenged the order dated 26.05.2016 which is tantamount to a fresh/different cause of action. Hence the current OA is not as per liberty granted to the applicant. We are inclined to agree with the respondents on this point and to that extent the OA of the applicant fails. Further even w.r.t the order dated 26.05.2016 whose quashing has been sought by the applicant, we find that the order dated 26.05.2016 is nothing but an information given to the applicant that her contractual appointment was extended till 31.12.2016 with all prevalent terms & conditions. Therefore, first of all, this is no order, which is to be quashed. This is only information given to the applicant for extension of her contractual employment. We fail to understand that if this order is quashed, what relief can be granted to the applicant. Hence, we feel that the prayer of the applicant qua the quashing of the order/letter dated 26.05.2016 does not hold good on grounds of being at variance with the liberty granted in the OA 33/2018 and also on grounds of impugning an inappropriate document/order/letter.

13. As regards the third issue concerning delay in the filing of the current OA 485/2018, it is clear that the order impugned is of the year 2016 and the OA is filed in 2018. That inspite of this, the applicant did not feel any necessity to file delay condonation application as per Section 21 of the A.T. Act, 1985. It would be useful to capture the Section 21 of the A.T. Act, 1985 at this juncture and the same is accordingly reproduced hereunder and reads as follows:

"21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal

becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

Given the admitted position qua the date of filing of OA and the impugned order, and the fact that there is no condonation delay application, we are inclined to agree with the respondents on this issue of condonation delay application and thereby agree with the respondents as pleaded by them in their Counter Reply wherein they have taken categorical plea that the applicant's filing of this O.A. is at a belated stage which comes under limitation of Section 21 of AT Act, 1985. Even the order dated 24.01.2019 passed by this Tribunal also dealt with limitation, but order was recalled by way of Review Application. It is surprising that even after that, the applicant did not feel any necessity for filing delay condonation application. Accordingly, in our considered opinion, not making an application under Section 21(3) of the AT Act, 1985 for seeking condonation of delay, the applicant has acted directly under the teeth of the judgement of **Ramesh Chand Sharma Vs Udhamp Singh Kamal and Ors reported in (2000) SCC (L&S) 53** and also in the case of **Secretary to the Govt. of India Vs Shivam Mahadu Gaikwad reported in (1995) SCC (L&S) 1148**. Para 7 of the judgment rendered in the case of Ramesh Chand Sharma reads as under:-

"7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see Secretary to Government of India and Others v. Shivam Mahadu Gaikwad."

Hence, the present O.A. comes under limitation.

14. The next issue concerns prayer of the applicant for regularisation of her services. On this we find that first of all, in the entire pleadings the applicant has failed to produce any request letter/ representation to the authorities concerned/respondents stating therein that due to her long

services rendered with them, she should have been regularised. It is mandatory on the part of the applicant that if any prayer is made before this Tribunal, the applicant has to exhaust all the remedies available to him/her and thereafter to approach the Court/Tribunal. We do not find that any attempt has been made by the applicant in this regard. Therefore this prayer of regularization itself seems to be on a very weak wicket *ab initio*.

15. It was also contended by the learned counsel for the applicant that the case of the applicant shall be covered by para 53 of the judgment rendered in the case of Uma Devi. However, this view cannot be held forth because though in the case of Uma Devi it was only one time relaxation for those who were on roll in the year 2006 and who had put in 10 years service as on 10.4.2006. The case of the applicant does not fall within that category. The contention of the learned counsel for the applicant is that since the applicant was appointed against a regular post, hence her appointment is deemed to be regular one cannot be upheld. This is because as already dealt above, the contents of appointment letter issued to the applicant clearly stipulate the terms & conditions of offer of appointment as well as that the applicant would be paid consolidated pay of Rs. 4000/- per month. From the terms and conditions as narrated in the offer of appointment letter, it is clear that the applicant was not of a regular employee of the IGRUA. It is also not the case of the applicant that she has been replaced by another fresh contractual employee. Hence, the plea for regularization on the shoulder of Uma Devi (supra) also fails.

16. In conclusion, in view of the discussions made hereinabove, we do not find any merit in the O.A. The O.A. is liable to be dismissed and is accordingly dismissed. No costs.

(Devendra Chaudhry)
Member (A)

Girish/-

(Ms. Jasmine Ahmed)
Member (J)