

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A.No.746 of 2010

Order reserved on - 14th November, 2012

Order pronounced on - 21st November, 2012

CORAM

**THE HON'BLE DR.R.C.PANDA, MEMBER (ADMN.)
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)**

.....

Sri Gopal Reddy,
Aged about 52 years,
S/o.Late G.Ballaya Mali,
Qr.No.IR/3 (GF), RIE Campus,
Bhubaneswar, Dist. Khurda.

.....Applicant

Advocate(s) - M/s.Chitra Padhi, M.Devi

-Versus-

Union of India represented through -

1. The Secretary,
National Council of Education & Scientific Research and Training,
Sri Aurobindo Marg,
New Delhi-110 018.
2. Principal,
Regional Institute of Education,
At/Po.Bhubaneswar,
Dist. Khurda.
3. Administrative Officer,
Regional Institute of Education,
At/Po-Bhubaneswar,
Dist. Khurda.

.....Respondents

Advocate(s) - Mr.U.B.Mohapatra, SSC

O R D E R

DR.R.C.PANDA, MEMBER (ADMN.):

Shri Gopal Reddy, the Applicant herein, is visiting this
Tribunal in his second round of litigation. Earlier, he filed OA No. 306 of
2010 which was disposed of on 09.06.2010 at the admission stage

A ...9

granting liberty to him to make a representation taking all points raised in the OA and on receipt of the same the competent authority would pass a reasoned order and it was *inter alia* provides that till then the provisions contained in the order dated 19.5.2010 would not be made applicable to him. Furtherance of the above directions the second respondent has communicated him a letter dated 30.07.2010 (Annexure-A/3) which he has assailed in the present OA. The Applicant has sought for the following reliefs:

- (i) To quash letter dated 30.07.2010 (Annexure-A/13) for the ends of justice.
- (ii) Be further pleased to antedate the regular appointment of the applicant w.e.f. the year vacancies arose w.e.f. 1999 along with all consequential benefits.
- (iii) Be further pleased to pass any other relief.....”

2. Respondents-Department have filed their counter resisting the claim of the applicant. They have also stated that the present O.A. being hit by delay and laches the same is not maintainable and is liable to be dismissed.

3. We have heard Ms. C. Padhi, Ld. Counsel for the applicant and Sri U.B.Mohapatra, Ld. Sr. Standing counsel appearing for the Respondents and perused the materials on record.

4. At this stage, it is apt to reproduce below the impugned communication dated 30.07.2010 (Annexure-A/13) which is sought to quashed herein.

“Sub: Your appointment/regularization of service in a Group-D post from 1999.

Ref: Your representation dated 23-06-2010 addressed to the Principal, RIE, Bhubaneswar.

With reference to your representation dated 23-06-2010 addressed to the Principal, RIE, Bhubaneswar on the above mentioned subject, it is to intimate you that your representation has been carefully considered

by the competent authority and it is regretted that your such request for your appointment to the post of Group-D on regular basis w.e.f. 1999 onwards could not be acceded to. It was the prerogative of the employer to fill up any vacant post from any date subject to administrative convenience. Further, it was also surprising that you have raised such an issue after almost ten years of your regular appointment as Group-D for which your claim is not only badly delayed but also lacks any merit for consideration. The competent authority had constituted DPC for this purpose and on the basis of the recommendations of the DPC you were regularized as a Group-D, Mali w.e.f. 28-07-2007. Since all the ten other daily wagers were engaged prior to you, their regularization in service prior to your regularization was justified. It is also pertinent to mention that no other daily wager was engaged for gardening work/Mali work.

Since you were appointed on regular basis w.e.f. 28-07-2007 onwards which was after 01-01-2004, you are covered under the New Pension Scheme, 2004 of the Government of India and no irregularity has been committed by this Office in this regard. It has been made very clear in the Department of Personnel & Training O.M.No. 49014/1/2004-Estt.(C), dated 26-04-2004 that since there is no provision of G.P.F. in the new pension scheme, the deductions made towards GPF contribution from casual employee in terms of Para (5) (vi) of the scheme for grant of temporary status including the deductions made after 01-01-2004 onwards shall be refunded to such employee and no further deduction shall be made from him towards GPF contributions.”

5. This case would reveal that the applicant was initially employed as Daily Wager in the year 1984 and subsequently conferred with temporary status w.e.f. 09.06.1994. While the matter stood thus, vide order dated 14.08.2007 his services were regularized w.e.f. 20.07.2007. It is the case of the applicant that whereas similarly placed persons, who had been conferred with temporary status w.e.f. 09.06.1994 were regularized within 2 to 3 years of conferment of temporary status but he was regularized after more than 12 years of conferment of temporary status

My ans
—

despite available vacancy. Thus, according to the Applicant the discrimination caused needs to be removed.

6. Learned Senior Counsel appearing for the Respondents while denying the stand taken by the Applicant with regard to discrimination by placing reliance on some of the contentions raised in the counter has contended that this OA being devoid of any merit is liable to be dismissed.

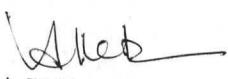
7. We have considered the rival submissions of the parties. We find Respondent-Department, vide Memorandum dated 27.7.2007 placed at Annexure-A/3, invited the willingness of the Applicant for regularization in which it was specifically mentioned that if the applicant accepts the offer he would be governed by the new pension cum gratuity rules of the Government of India introduced by Notification No.5/7/2003ECB&PR dated 22.2.2003 extended to NCERT employees. On the basis of the acceptance of the terms and conditions made therein the services of the applicant were regularized. It is not the case of the Applicant that he did not accept the conditions stipulated therein nor was his option conditional. Rather after lapse of more than two years he approached this Tribunal in OA No. 306 of 2010 which was disposed of on 9th June, 2010 by granting liberty to the applicant to make representation and with direction to the Respondents to consider the said representation and dispose of the same within the period stipulated in the order. Applicant preferred representation and the said representation was considered but rejected. Thereafter, he has approached this Tribunal.

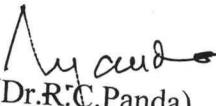
8. When the regularization after acceptance of the conditions offered to him and his regularization was only after new rule came into effect, he is estopped under law to challenge one way or the other seeking

direction to grant him the benefits as per the old Rules. In view of the above, we find no infirmity in the order of rejection.

9. Next contention of the Applicant's counsel is that his case is covered by the order of the Hon'ble High Court of Delhi dated 27.1.2010 in WP (C) No. 12690/2009 and CM No. 13359/2009 (**Union of India and another Vrs Dalip Kumar**) and of this Bench dated 19th August, 2011 in OA No. 545 of 2011 (**Sri Govinda Chandra Biswal Vrs UOI and Others**) and as such, the applicant is entitled to the relief claimed in this OA. It is trite law that each case has its own peculiarity and the Court/Tribunal should not place reliance without examining how far the facts and issues of a particular decision is relevant to the case in hand. In this connection we have gone through the decisions relied on by the Applicant's counsel vis-à-vis the case in hand. But we find that facts and issues involved in both the cases relied on by the Applicant's Counsel are totally different and distinct to the facts of the case in hand and as such the decisions relied on by the Applicant's Counsel have no application to the present case.

10. For the reasons discussed above, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.


(A.K. Patnaik)
Member (Judicial)


(Dr. R.C. Panda)
Member (Admn.)