

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application Nos.115/2008 & 157/2009
with
Misc. Application No.95/2009**

Jodhpur, this the 31st day of May, 2016

Reserved on 23.05.2016

CORAM

**Hon'ble Sh. U. Sarathchandran, Judicial Member
Hon'ble Ms. Praveen Mahajan, Administrative Member**

1. OA No.115/2008

Mukhtiar Ali S/o Shri Abdul Samad, aged about 40 years, R/o Outside Pabu Bari Meghwal Mohalla, Bikaner, presently working on the post of Majdoor in the office G.E. (Army) (North), Bikaner (Rajasthan).

.....Applicant

Mr. S.K. Malik, counsel for applicant.

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director General, Engineer in Chief's Branch Army Headquarters, Kashmir House, DHQ Post-New Delhi.
3. The Commander Works Engineer, (CWE), Air Force, Bikaner (Rajasthan).
4. The Garrison Engineer (Army), North, Bikaner (Raj).

.....respondents

Mr. K.S. Yadav, counsel for respondents.

(2) OA No.157/2009 along with MA No.95/2009

1. Diler Singh S/o Shri Sher Singh, aged about 50 years R/o Sagar Road, Near Sofia School, Bikaner, presently working on the post of FGM (SK) in the office of GE (AF) Nal, Bikaner.
2. Laxman Singh S/o Shri Sultan Singh, aged about 52 years, R/o Mega Market, Tanot Mata Ki Gali, Tilak Nagar, Bikaner. Presently

3. Ajeet Singh S/o Shri Randheer Singh, aged about 52 years, R/o House No.394, Virat Nagar, Udasar Road, Bikaner. Presently working on the post of FGM (SK), in the office GE (AF) Nal, Bikaner.
4. Mahaveer Prasad S/o Shri Bulaki Das, aged about 50 years, R/o Pathano ki Gali, Phar Bazar, Bikaner. Presently working on the post of Elect.(SK), in the office of GE (AF) Nal, Bikaner.
5. Panne Singh S/o Shri Mool Singh, aged about 53 years, R/o Nal Bari, Bikaner presently working on the post of FGM (SK), in the office of GE (AF) Nal, Bikaner.
6. Om Prakash S/o Shri Ram Lal, aged about 54 years, R/o Purana Roshni Ghar, Behind Bhatia Bhawan, Bikaner. Presently working on the post of Elect. (SK), in the office of GE (AF) Nal, Bikaner.

.....Applicants

Mr. S.K. Malik, counsel for applicants.

Vs.

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director General, Engineer in Chief's Branch Army Headquarters, Kashmir House, DHQ Post-New Delhi.
3. The Commander Works Engineer, (AF), MES Bikaner.
4. The Garrison Engineer (AF), MES Nal, Bikaner.

.....respondents

Mr H.S. Bhati, proxy counsel for
Mr. Rameshwar Dave, counsel for respondents.

ORDER

Per Sh. U. Sarathchandran

These two OAs along with OA No.147/2008 were disposed of by this Tribunal on 18th May, 2011 by a common order. When the order relating to OA No.157/2009 was taken up before the High Court of Rajasthan in DB Civil Writ Petition No.1471/2012 the aforesaid common order was set aside by the

merits. A similar order was passed by the Hon'ble High Court when the order relating to OA No.115/2008 also was challenged in DB Civil Writ Petition No.1470/2012, following the judgment in the former writ petition i.e. 1471/2012. Accordingly both these cases were taken up today. We have heard learned counsel appearing for applicants in both these cases and also the learned counsel appearing for the respondents in the process of fresh adjudication on merits of both these OAs.

2. The brief facts relating to these OAs are as follows: The applicants were initially engaged by the respondents in the post of Motor Pump Attendant (MPA, for short which was redesignated as FMG, Later) [in case of applicant in OA No.115/2008] and in case of applicants in the other OA they were appointed in the posts of DES, MPA and Line man respectively during the year 1985. When their services were terminated by the respondents in 1987, they approached this Tribunal by filing OA No.65/87. During the pendency of OA No.65/87 applicant in the present OA No.115/2008 withdrew the case as per a written statement filed by him on 06.05.1988 through his counsel. In that statement the applicant has requested to permit him to withdraw the case and his name from the array of applicants in OA No.65/87 as the respondents have given assurance to him for reinstatement if he withdraws the case in the Tribunal.

3. It is the further case of the applicant in both these cases applicant in OA No.115/2008 was thereafter given appointment by the respondents as Mazdoor stating that there is no vacancy in the post of MPA he was holding earlier and therefore he was told to take employment as Mazdoor despite the fact that

allowed by this Tribunal vide Annexure-A/1 order (in OA No.115/2008). Respondents filed civil appeal before the Supreme Court of India. The Hon'ble apex court vide Annexure-A/2 order (in OA No.115/2008) modified the order of this Tribunal with the following order:

“ORDER

Special leaved granted.

The appeals are heard. Having regard to the facts and circumstance of these cases, we feel that the order of the Tribunal should be modified by directing the appellants to reinstate the workman concerned in the posts held by them before the retrenchment without any backwages within one month from today. The services of those who satisfy the prescribed qualifications according to the Rules prescribed, shall be regularized in the post in which they are reinstated. The appeal is accordingly disposed of.”

(emphasis added)

Applicants in OA No.157/2009 state that in spite of the aforequoted apex court's order, they were reinstated and given appointment in the post of Mazdoor instead of the posts from which their services were terminated. According to them the respondents gave them an assurance that their orders of appointment will be modified as and when vacancies are available, even though, infact, vacancies were available of such date and the same were being utilized by respondents through contractors. The applicants further state that when Shri Jagdish and others who were initially engaged in the post of Carpenter and subsequently terminated by the respondents challenged the acts of the respondents in OA No.285/1993 and the same was allowed on 04.03.1998. Thereafter Shr Jagdish was appointed on the post of Carpenter w.e.f. 22.09.1999 vide Annexure-A/3 (in OA No.115/2008). According to the applicants the co-ordinate bench of this Tribunal at Chandigarh in OA

OA filed by similarly situated persons and the order of the Chandigarh Bench was implemented vide Annexure-A/4 & A/5 (in OA No.157/2009). Applicants further state that a similar OA has been disposed of by this Tribunal in OA No.273/2004 filed by Narayan Ram & others vide Annexure-A/6 order (in OA No.115/2008). Seeking parity of the aforementioned orders passed by this Tribunal and by the Chandigarh Bench the applicants pray for directing the respondents to regularize/re-appoint them on the post of MPA/ the post from which they were retrenched with all consequential benefits.

4. These two OAs are resisted by the respondents mainly on the ground of delay, stating that the applicants have been re-engaged as Mazdoor and they have been holding that post without any demur. According to the respondents no assurance was given to the applicant in OA No.115/2008 to give him employment if he withdrew his case from OA No.65/1987. Accordingly to respondents no document was produced by the aforesaid applicant to prove any such assurance. Respondents further state that the applicants in these two OAs have been reinstated as per the policy of the department and hence they are not entitled any relief as prayed for.

5. We have heard Shri S.K. Malik, learned counsel appearing for the applicants in both these case and Shri K.S. Yadav for the respondents.

6. Perused the record.

7. One of the contentions of the respondents was that these OAs are hit by the bar of limitation stipulated Section 21 of the Administrative Tribunals Act, 1985. However the Hon'ble High Court of Rajasthan has overruled this plea of the respondents in the judgment dated 25.08.2015 in DB Civil Writ Petition

"It is not in dispute that the Hon'ble Supreme Court while disposing of the Special Leave Petition preferred by the respondents modified the directions given by the Central Administrative Tribunal in relation to grant of back wages but ordered for reinstatement of applicants and other similarly situated persons on the posts held by them before their retrenchment. In view of the orders passed by the Hon'ble Supreme Court, it was obligatory upon the respondents to reinstate the applicants and other similarly situated persons as per the directions given. The respondents if had not complied with the directions given by the Hon'ble Supreme Court, then in our considered opinion, the appropriate course before them was to examine the cases of the petitioners in the light of the directions by Hon'ble the Supreme Court and also in terms of the directions given by the Central Administrative Tribunal in the cases raised by other similarly situated person. The objection with regard to limitation in such circumstances was not at all warranted as the prime duty of the respondents was to adhere to the directions given by the Hon'ble Apex Court."

(underlining supplied)

It is clear from the aforequoted decision of the High Court that the respondents ought to have adhered to the directions given by the apex court (*supra*) and that it was obligatory on the respondents to reinstate the applicants and other similarly situated persons as per the directions given. Therefore we are of the view that the contentions taken by the respondents in their reply statements in both these OAs have become otiose.

8. Applicants in both these OAs have relied on the decisions taken by this Tribunal in other OAs filed by similarly situated persons and those filed before the co-ordinate bench at Chandigarh. Of all the aforesaid decisions we feel that the observations made by this Tribunal in the order dated 22.11.2005 in OA No.273/2004 (*Narayan Ram & others v. Union of India & Ors.*) are pertinent in the cases on hand also:

"The applicants in this case were also appointed under the earlier rules, which do not prescribed qualification. The qualification of ITI was introduced only w.e.f. 12.09.1991, so there was no defect in their appointment when they were initially appointed as wireman, DES & MPA respectively and once they were ordered to be

the directions given by the Courts which is more in disobedience rather than compliance. It is clear from Annexure-A/9 that the qualification of ITI was introduced in the letter dated 12.09.1991 and in this case the applicants have been reinstated in November, 1989 itself, when earlier rules were still in force which did not prescribe any qualification for holding the post of wireman, DES and MPA, so there was no reason for respondents to appoint the applicants on lower posts in the guise of lack of new qualifications."

In our view, the above dictum forecloses all the possible contentions to be taken by the respondents.

9. Shri Malik, learned counsel for the applicants submitted that the applicants are entitled to reinstatement to the post held by them before retrenchment in terms of Annexure-A/2 order (in OANo.115/2008) (*supra*). He pointed out that at the time of their retrenchment there was no prescribed qualification for the post held by these applicants and therefore they are entitled to be reinstated to the posts held by them and that they are further entitled to be regularised in those posts.

10. Shri Yadav, learned counsel for the respondents submitted that in terms of the aforequoted apex court's decision the applicants in both these cases are not entitled to any back wages. That is true.

11. After having heard both sides we are of the considered opinion that the applicants in both these OAs are entitled to be reinstated in the post they were holding immediately prior to their retrenchment, in terms of the aforequoted order of the hon'ble apex court. We further hold that applicants are entitled to similar treatment as in the case of other orders of this Tribunal in similarly situated cases and that of the co-ordinate bench at Chandigarh referred to

12. In the result we direct the respondents to re-appoint/regularise the applicants in both these OAs on the posts they were holding immediately prior to their retrenchment w.e.f. the initial date of such appointments. The period between their retrenchment and the date of reinstatement shall be notionally reckoned for the purpose of computing their pensionary benefits albeit without any actual payment of back wages. The OAs are allowed to the extent as above. Parties shall suffer their own costs.


[Praveen Mahajan]
Administrative Member


[U. Sarathchandran]
Judicial Member

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