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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.03.2012

OA No.489/2011 with MA 67/2012

Dr. Saugath Roy, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

On the request of the learned counsel for the respondents, list it on 20.03.2012.

Anil Kumar
(Anil Kumar)
Member (A)

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20.3.2012

Dr. Saugath Roy, Counsel for applicant
Mr. Gaurav Jain, Counsel for respondents

Heard. The OA is disposed of by
a separate order. MA No. 67/2012, filed by the respondents,
for taking documents on record is allowed.

Anil Kumar
(Anil Kumar)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 20th day of March, 2012

ORIGINAL APPLICATION No. 489/2011

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Abhishek Maheshwari son of Shri Vinod Kumar Maheshwari, aged about 32 years, resident of 782, IInd Floor, Devi Apartment, Devi Nagar, New Sanganer Road, Jaipur.

... Applicant

(By Advocate : Dr. Saugath Roy)

Versus

1. Union of India through Under Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Chief Commissioner of Income Tax, NCR Building, Statue Circle, Jaipur.

... Respondents

(By Advocates : Mr. Gaurav Jain)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

"That your lordship may graciously be pleased to accept the original application and further be pleased to quash and set aside impugned order or rejection dated 06.09.2010 (Annexure A/1) and the order 22.07.2009 (Annexure A/8) upto the extent of Para 2 clause (b) of the OM dated 22.07.2009 and further direction be issued to the respondents to regularize the service of the applicant on the post of Data Entry Operator and he should be allowed to continue on the post of Data Entry Operator with all consequential benefits.

Any other order or direction, which this Hon'ble Tribunal deemed fit and proper be passed in favour of the humble applicant."

2. The case of the applicant is that he has served for more than 10 years with the respondents and, therefore his services

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should be regularized in terms of DOP OM dated 11.12.2006 issued for regularizing the services of the qualified workers as one time measure (Annexure A/2). This circular of the DOPT is based on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 3959-3612/1999 etc. in the case of **Secretary, State of Karnataka and Others vs. Uma Devi & Others**. That in pursuance of the DO letter dated 07.09.2007, all the Commissioners were requested to furnish requisite information in the prescribed form by 17.09.2007 vide letter dated 14.09.2007 (Annexure A/3). That the name of the applicant was included in the details of contingent personal working at BCTT office Jaipur (Annexure A/4). That the applicant possesses requisite qualification and has a work experience but when no action was taken by the respondents for his regularisation, then the applicant was compelled to file OA No. 364/2010 before this Tribunal. This Tribunal vide its order dated 05.08.2010 directed the applicant to submit a representation to the authorities (Annexure A/6). The applicant submitted the representation on 09.08.2010 (Annexure A/7). That the respondents did not consider the representation of the applicant in the right perspective and rejected it vide impugned order dated 06.09.2010 (Annexure A/1). In the rejection order, the respondents have inserted the OM dated 22.07.2009, which is simply a letter in which the 'cut off date' for regularisation has been fixed as 10.04.2006 i.e. the date of judgment in the case of **Secretary, State of Karnataka and Others vs. Uma Devi & Others**. The applicant assailed the order of rejection before the Hon'ble High Court by way of DB Civil Writ Petition No. 15055/2010. Hon'ble High Court vide its order dated

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12.10.2011 directed the applicant to file a fresh OA within a period of one month from the date of the order before the Tribunal. The applicant, therefore, filed the present OA before this Tribunal.

3. The applicant further stated that his claim for regularisation on the post of Data Entry Operator has been rejected ignoring the fact that he has served for more than 10 years till the date of consideration. That the circular of the DOPT dated 11.12.2006 only speaks of ten years service. The applicant has completed 10 years of service and as such the action of the respondents in putting a rider vide Memorandum dated 22.07.2009 is arbitrary and therefore, deserves to be quashed and set aside. He further stated that the persons who had not completed their service of ten years till the date of consideration have been allowed regularisation vide order dated 30.01.2009 (Annexure A/11). Therefore, the OA may be allowed and the services of the applicant be regularized.

4. The respondents have filed their reply. The respondents have stated that the order passed by the respondents on the representation of the applicant (Annexure A/1) is according to the provisions of OM dated 22.07.2009. This OM has clarified the 'cut off date' for counting ten years of completed service for regularisation of daily wage worker as 10.04.2006, which is the date of judgment of the Apex Court in the case of **Secretary, State of Karnataka and Others vs. Uma Devi & Others**. The applicant has not completed 10 years of service on the given date

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as he was working as daily wage worker in the Department since October, 1997 and he has not worked in the Department from June 2004 to 15th September, 2005. That the case of the applicant is also not covered under the DOPT OM dated 10.09.1993 as the applicant was not working as casual labourer in the Income Tax Department as on 01.09.1993 and also he has not completed one year of service. That the Department had constituted a Review Committee for regularisation of Daily Wagers. It has submitted its report on 05.12.2011 (Annexure MA R/1) and in this, Committee considered the cases of the employees who were working in the Department since 01.01.1977 and it has not found anyone as eligible to be regularized as per the circular dated 22.07.2009 (Annexure R/2). Therefore, the applicant has no claim for regularisation and his representation has been rightly rejected vide letter dated 06.09.2010 (Annexure A/1). Therefore, OA be dismissed being devoid of merit.

5. Heard the learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant argued that as per the Memorandum of the DOPT dated 11.12.2006 (Annexure A/2), no 'cut off date' has been fixed. Hon'ble Apex Court vide its judgment dated 10.04.2006 in the Civil Appeal No. 3595-3612/1999 etc. in the case of **Secretary, State of Karnataka and Others vs. Uma Devi & Others** had directed that the Union of India, the State Government and their instrumentalities should take steps to regularize as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for

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the post and who have worked for ten years or more in duly sanctioned posts but not under cover of order of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or it is in violation of the provisions of the Constitution, illegality cannot be regularised. That in pursuance of this order, Central Board of Direct Taxes vide its letter dated 14.09.2007 asked for the information in respect of daily wage workers. In compliance of this letter, the office of the Additional Commissioner of Income Tax forwarded the name of the applicant at sr. no. 1 vide letter dated 11.08.2008 but the services of the applicant were not regularized. In the meantime, the respondents issued another circular dated 22.07.2009, Para b of which reads as under:-

"(b) The cut off date of calculation of the tenure of working for 10 years or more in respect of Casual labourers in terms of this department's OM dated 11.12.2006 is obviously the date of judgment of Apex Court in the case of Uma Devi vs. Government of Karnataka i.e. 10.04.2006."

6. Learned counsel for the applicant argued that this circular be declared ultra virus as Hon'ble Apex Court in the case of **Secretary, State of Karnataka and Others vs. Uma Devi & Others** has not fixed any date for completing ten years of service.

7. Learned counsel for the respondents argued that this Circular dated 22.07.2009 has been issued on the clarification given by the DOPT. The DOPT is a modal department with regard to regularisation of casual workers/ daily wage workers and they have advised that the 'cut off date' for calculation of the tenure of working of ten years or more has to be calculated from the date of

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the judgment of the Apex Court in the case of **Secretary, State of Karnataka and Others vs. Uma Devi & Others** i.e. 10.04.2006 and there is no arbitrariness in fixing this date. Hon'ble Apex Court had directed to regularize the daily wage workers/ casual labourer as one time measure and, therefore, there has to be some 'cut off date'. The respondents have acted as per the advice of the DOPT. Therefore, the action of the respondents in taking 10.04.2006 as 'cut off date' for the purpose of regularisation is neither arbitrary nor illegal. Moreover, DOPT has not been made party in the present OA.

8. Learned counsel for the respondents also argued that the order dated 30.01.2009 (Annexure A/11) was issued by the Gaziabad region and it is prior to clarification issued by the respondent department on dated 22.07.2009. Therefore in these circumstances, no relief can be given to the applicant on the basis of this order. The claim of the applicant has been rightly rejected by the respondents and he is not eligible for regularisation. Therefore, he prayed that the present OA may be dismissed being devoid of merit.

9. After hearing the rival submissions of the parties and on perusal of the documents on record, I am of the opinion that the applicant has failed to make out a case for interference of this Tribunal. The OM dated 22.07.2009 (Annexure A/8) has been issued on the basis of the advice of the DOPT. The DOPT advised the Department as under:-

“(b) The cut off date of calculation of the tenure of working for 10 years or more in respect of Casual labourers in terms

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of this department's OM dated 11.12.2006 is obviously the date of judgment of Apex Court in the case of Uma Devi vs. Government of Karnataka i.e. 10.04.2006."

I do not find arbitrariness in fixing the date 10.04.2006 as 'cut off date' for calculation of the tenure of working for ten years or more for the purpose of regularisation of casual labourers. Since the rejection of the applicant's representation is based on provisions of this OM dated 22.07.2009, I do not find any infirmity/illegality in the order passed by the respondents. It is admitted that if 10.04.2006 is taken as 'cut off date', the applicant has not completed ten years service with the respondent department. It is also not disputed that the applicant had not worked with the Department from June, 2004 to 15th September, 2005 and thus the applicant had not completed the stipulated period of working period of 10 years or more with the respondents department. Therefore, I find no merit in the present OA.

10. Consequently, the present OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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