

**Central Administrative Tribunal
Principal Bench**

**RA No.193/2015
in
OA No.2547/2013
MA No.2515/2015**

New Delhi, this the 2nd day of September, 2015

**Hon'ble Mr. A.K .Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Laxmi Narain (age about 59 years),
S/o Shri Ram Dutt,
R/o RZ-189, Nanda Enclave,
Gopal Nagar, New Delhi.

...applicant

(By Advocate : Shri S.P. Chadha)

Versus

1. The Chief Secretary,
Govt. of NCT of Delhi,
Sachivalaya, ITO, New Delhi.
2. The Principal Secretary,
Health & Family Welfare, GNCT,
F-17, Karkardooma, New Delhi.
3. The Director,
Health Services, GNCT,
F-17, Karkardooma, New Delhi.
4. The Medical Superintendent,
Rao Tula Ram Hospital,
Zafarpur, New Delhi.

...respondents.

(None)

ORDER (ORAL)

Mr. A.K. Bhardwaj, Member (J) :-

The only ground raised on behalf of the applicant to seek review of the order passed in OA No.2547/2013 is that in terms of Rule 4 of CCS (Fixation of pay of Re-employed Pensioners) Rules, 1986, re-employed pensioner in addition to pay as fixed in para 4(b) (b) should be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits. The understanding of the applicant and his counsel of the aforementioned rules is that a re-employed Govt. Servant would be entitled to pension for the service rendered by him on re-employment. We are afraid that the understanding is not correct. The ramification of the rule is that re-employed Govt. Servant would in addition to pay admissible to him on re-employment post, be permitted to draw pension sanctioned to him for the previous employment. While adjudicating the OA, we had in para 4 of the aforementioned order dealt with the issue of benefits of service attached to re-employment and not the issue of pension for the service rendered. For easy reference, para 4 of the aforesaid order is reproduced below :-

“4. We heard counsel for parties and perused the record. As can be seen from Office Order No.548 dated 11.05.2000, the initial appointment of the applicant was on reemployment basis for a period of six months or till attaining the age of 65 years or till appointment of regular incumbent, whichever could be earlier. The order read thus:

“ OFFICE ORDER NO 548

Consequent upon his selection and acceptance of offer of appointment as per terms and conditions mentioned therein, Director, Dte of Health Services is pleased to appoint Shri Laxmi Narain as (ECG Tech) was retired as ECG Tech.

On re-employment basis wef 24.4.2000 for a period of six months or till attaining the age of 65 years or till regular incumbent are appointed, whichever is earlier, in the pay scale of Rs.4000-100-6000/- which are guided by the instructions contained in the

Central Civil Services (Fixation of pay of re-employment pensioners) order 1980 and further instruction issued time to time.

He is hereby taken on the strength of this Directorate wef 24.4.2000 and posted at R.T.R.M. Hospital from the same date.”

It is not in dispute that subsequently, the appointment was specifically converted into contractual appointment and it was only after the order dated 29.09.2010 passed by this Tribunal in OA No. 823/2010 that the applicant was taken back in service and was granted the relief against the conversion of nature of his employment to contractual. As can be seen from the order passed by the Tribunal, the only view taken by it was that the appointment of the applicant was in regular pay scale and it was nowhere ruled that the appointment itself was regular in nature. Further, though the initial appointment of the applicant was shown as re employment, but the same was virtually contractual in nature. The ramification of the aforementioned order of the Tribunal was that the consolidated pay of the applicant i.e. Rs.9923/- was restored to regular pay scale. As has been ruled by Honble Delhi High Court in LPA 375/2009 (Rajender Prasad Vs. National Human Right Commission), the appointment to a post need to be regulated in terms of the conditions mentioned in the appointment order. Relevant excerpt of the order read thus:-

4...In case of re-employment, there can be no question of any particular terms of employment/engagement being stipulated in the appointment order, since the

regular employment has to expire on the date of superannuation as prescribed in the rules. Therefore, the use of expression on re-employment basis was nothing but a misnomer in the appointment/extension orders issued to the appellant from time to time. More importantly, since the recruitment rules envisaged appointment only on transfer/transfer on deputation basis there can be no question of re-employment till the prescribed date of superannuation.

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11. Dealing with the doctrine of legitimate expectation invoked by the respondents, the Court, after referring to its decision in Sethi Auto Service Station v. DDA : (2009) 1 SCC 180 held that since the terms of the letter of appointment of the respondents made it clear that the appointments were temporary and would not confer any right to claim any permanent post in the department and since no promise of absorption as regular employees had been made to them and in fact no such promise could be held out in view of the Government OA dated 07.06.1988 which banned employment of persons in regular posts.”

2. It was also the plea raised by the learned counsel for applicant in the OA that the provisions of para 4 of the order relied upon by him (ibid) are pari materia to Rule 18 of the CCS (Pension Rules). While adjudicating the OA, we had deliberated on the issue after taking note of the provisions contained in Rule 18 (ibid).

3. It is settled position of law that after passing the order, the Tribunals and courts become *functuous officio*. Only exception to such principle is review, which is permissible only on limited grounds, i.e. there being an error apparent on the face of record,

some documents, which could not be brought to the notice of the Court despite due diligence, are found and brought on record with RA or any other sufficient reason. We do not find any of the yardsticks fulfilled/satisfied in the present Review Application.

4. Review Application is devoid of any merit and is accordingly dismissed. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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