

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-2432/2013

Order Reserved on: 25.02.2016

Order Pronounced on: 07.09.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri Mahesh Kumar Chalia
S/o Shri Amar Singh Chalia
(Employed as Lower Division Clerk
In Central Council of Research in
Unani Medicines)
65-66 Institutional Area,
Janak Puri, New Delhi-110058.

-Applicant

(By Advocate: Shri Jagdish Singh)

Versus

(Respondents 1&2 Deleted).

3. Director General,
Central Council of Research in
Unani Medicines,
65-66 Institutional Area,
Janak Puri, New Delhi-110059.

4. Administrative Officer,
Central Council of Research in
Unani Medicines,
65-66 Institutional Area,
Janak Puri, New Delhi-110058.

5. Deleted.

-Respondents

(By Advocate: Shri M.K. Bhardwaj for R-3 & R-4)

ORDER

Per Sudhir Kumar, Member (A):

The applicant has approached this Tribunal in the present OA being aggrieved that he has been subjected to discrimination as

compared to (since deleted) Private Respondent R-5, and that in his case the Official Respondents are not converting the intervening spells of service rendered by him on daily wage basis to be on ad hoc basis, as was done in the case of (since deleted) Private Respondent R-5.

2. The facts of this case lie in a very narrow compass. The applicant was appointed as a Lower Division Clerk (LDC, in short) on daily wage basis from time to time. He has claimed that according to the DoP&T Guidelines contained in OM dated 10.09.1993, after completion of the prescribed number of 240 days/206 days in the case of office observing five days' week, he was entitled for a temporary status, without reference to the creation/availability of posts, and was also entitled for annual increments in the pay scale of the post of LDC, even prior to his appointment as such on regular basis on 20.04.2004. He has alleged that in his case the official respondents have not followed this policy, as well as provisions of FR-22 regarding counting of spells of ad hoc service, leading to his suffering huge financial loss. He has submitted that, on the contrary, (since deleted) Private Respondent R-5 had been granted these benefits, as well as annual increments, as per their policy and the Rules in this regard. He has given details of his appointment to the post of LDC, and has submitted that when his services were regularized w.e.f. 20.03.2004, vide order passed by Private Respondent R-4 on 30.12.2004, his pay was fixed only @ Rs.3050/-, at the minimum of the time scale of

pay of LDC of Rs.3050-4500, ignoring his entitlement to higher starting salary, after taking into account various spells of service rendered on daily wages/ad hoc basis. He had given details of similar engagement of Private Respondent R-5 also, to try to show discrimination at the hands of official respondents.

3. He had submitted representations and even issued reminders, and had even given a representation to the Grievances Committee, which Committee finally gave him a personal hearing on 27.07.2011, and, through its Minutes, it recommended for condoning two days' break in ad hoc service, and also one advance/premature increment. His grievance is that still Respondent No. R-4 issued a contrary order, and re-fixed his pay only @ Rs.3050/- at the minimum of the pay scale, with the next date of increment being 15.07.2004. When he represented for being granted at least one advance increment, as per the recommendations of the Grievance Committee, he was informed that the matter was again being put before the Grievances Committee for re-consideration, but that has not happened, because of which he alleged that he has been suffering recurring financial loss from 1996 onwards.

4. The applicant has taken the above mentioned grievance of his OA itself in the grounds for filing the present OA, and submitted that he has exhausted all remedies available to him, and has filed this OA praying for the following reliefs:-

“a) That the Respondents No. 1 to 4 be directed to convert the spells of service rendered by the applicant on daily wages from

1.4.2002 to 31.12.2002 and 11.1.2003 to 24.7.2003 into ad-hoc service with all consequential benefit,

b) That the Respondents be directed to condone intervening breaks of one day after every spell of 89 days in adhoc service rendered by the applicant with all consequential benefits,

c) Any other relief which the Hon'ble Tribunal may be pleased to grant under the facts and circumstances of this case".

5. (Since deleted) Respondents R-1&R-2 filed their counter reply on 04.10.2013. It was submitted that the applicant is an employee of an autonomous organization of the Central Council for Research in Unani Medicine (CCRUM, in short), which is a Society registered under the Societies' Registration Act, 1860, and its employees are governed by the Memorandum of Association and Rules, Regulations & Bye-Laws of the Society itself. It was further submitted that under Rule-33 of the Rules and Regulations of the CCRUM Society, its Governing Body has full control over the day-to-day affairs and has the authority to exercise and perform all the functions, powers, act and deeds. It was further submitted that under Bye-Law 25(b) of Bye-Laws of the Council, Recruitments, appointments and promotions to all posts shall have to be made according to the Recruitment Rules (RRs, in short) laid down by the Governing Body, and that under Rule-50, the powers and functions of Director General, CCRUM have also been prescribed.

6. It was submitted that the applicant has tried to misguide and prejudice the mind of this Tribunal by not disclosing the correct and complete facts, and it was submitted that Respondents R-1&R-2 have no

role to play in deciding his case, and ought not to have been impleaded as party-respondents. It was, therefore, prayed that the names of Respondents R-1&R-2 may be deleted from the respondents, as the applicant does not have any cause of action against them.

7. Through order dated 27.08.2014, MA No.1315/2014 filed by learned counsel for respondents R-1&R-2, praying for deleting of the names of those respondents from the array of parties, as they have no role in this matter, had been allowed, and Respondents R-1 and R-2 stood deleted from the array of party respondents.

8. As a result, the applicant filed an amended Memo of Parties on 09.09.2014 with only two official Respondents R-3 and R-4 remaining as party respondents. These two official respondents filed their counter reply on 29.08.2014. A preliminary objection was taken that CCRUM is an autonomous organization, and all the Rules and Regulations of the Government are not directly applicable to it, unless they are made applicable to the CCRUM by a general order of the Government, or with the recommendation of the Governing Body of the Council, or approval of the Government. It was further submitted that the OA is barred by limitation, as the applicant has approached this Tribunal more than 10 years after the period of daily wage service rendered by him had not been counted, and as per the law laid down by the Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India and Ors. [S.L.P. (Civil) CC No. 3709 of 2011]**, the present OA filed after one year from the

date of the cause of action required to be dismissed on the ground of delay alone.

9. It was, therefore, submitted that the contention of the applicant in the OA that it has been filed within limitation was incorrect. It was further submitted that as per the Standing Order of the DoP&T in respect of those daily wagers who were engaged and were under employment as on 01.09.1993, and had completed one year's continuous service till then, were eligible for such grant of temporary status, but the applicant was engaged only on 22.09.1995, more than two years after the prescribed cut-off date, and, moreover, the Government Scheme was not intended for adoption by the autonomous organizations. It was submitted that it has already been held by the Hon'ble Supreme Court in **Union of India and Another vs. Mohan Pal & Others (2002) 4 SCC 573**, that the grant of temporary status as per OM dated 10.09.1993 could have been given as a one time measure only; that too to such employees who were in service as on the date of issuance of the said OM, which the applicant was not.

10. It was further submitted that the applicant was engaged by the Council on need based basis, in order to meet exigencies of work, and he had at that time accepted those terms and conditions of his engagement, and he cannot now claim to change the terms of

his engagement in respect of the relevant period after 10 years, and the OA filed by the applicant was, therefore, frivolous, and deserves to be rejected.

11. Though the name of Private Respondent R-5 had been deleted, it was stated by the Official Respondents R-3 & R-4 that the applicant's case was not at par with his case. Thereafter details of the case of Private Respondent R-5, whose name was deleted, were explained, which need not be re-counted here, since he is no longer a party to the present OA.

12. It was further submitted that the pay of the applicant was fixed as on 15.07.2003, with the next date of increment being fixed for 01.07.2004, the date from which he had been working on ad hoc basis in the Council without break, due to condonation of the period of break from 20.10.2003 to 18.01.2004, which facts the applicant has not presented properly. It was submitted that contrary to the claim of the applicant, actually his grievance had already been redressed, inasmuch as two intervening breaks between three ad-hoc spells of 89 days have already been waived in his case, and his date of annual increment had also been advanced by 11 months. It was submitted that the applicant has not presented the facts of the case properly and correctly, and that no discrimination has been meted out, as the intervening break

between the three ad-hoc tenures of his had already been condoned, and the OA itself does not lie, and was liable to be dismissed.

13. The applicant filed his rejoinder on 13.10.2014, more or less reiterating his contentions as made out in the OA. He had also tried to distinguish his case from the Hon'ble Supreme Court's judgment in **Union of India and Another vs. Mohan Pal & Others** (supra). He had further submitted that it is wrong to state that the cause of action had arisen to him in 2004, when he was appointed on regular basis, but, even after his having deleted Private Respondent R-5 from the array of parties, he had stated that cause of action first accrued to him on 26.03.2010, when the previously named Private Respondent R-5 had been granted the benefit of conversion of his intervening spells into regular service, and it once again accrued to him on 20.03.2013, with relation to the meeting of the Grievances Committee. He assailed the alleged partial and biased attitude adopted by the Respondents R-3 & R-4 while describing the case of the (since deleted) Private Respondent R-5 in very great detail. It was further submitted that if the DoP&T Guidelines were claimed by the Official Respondents R-3 & R-4 to be not applicable to the applicant, it was imperative upon them to frame an alternative policy, identical and similar in nature. Complaining that his grievances had still not been redressed,

because of the delay in convening the meeting of the Grievances Committee, it was prayed that the OA be decided in his favour, with costs.

14. Even before the arguments were heard on 27.04.2015, the written arguments had been submitted on behalf of the applicant on the same lines, and it was submitted that the date of increment of the applicant had been antedated only by 07 months and not by 11 months, as had been wrongly stated by the Respondents R-3 & R-4.

15. Heard. The applicant has actually built up his case in all his pleadings, both in the OA, as well as in his rejoinder, and also in the written arguments on the basis of the foundation of his having been meted out with discriminatory treatment, as compared to (since deleted) Private Respondent R-5, who had been initially named as a party respondent by him, but deletion of his name from the array of party-respondents was not later opposed by his counsel on 07.03.2014. Therefore, when the very basis and foundation of the pleadings, repeated again and again by the applicant, has disappeared, without that foundation the applicant cannot build a structure of a valid case, which he has desperately tried to do. Further, it is clear that the Govt. of India Scheme dated 10.09.1993 could not have automatically become applicable to the Respondent-

Society, without the Governing Body of the Society adopting that policy, which came into effect from 01.09.1993, and was applicable only to the persons who were in employment as on that date, which the applicant was not.

16. Further, the cause of action to agitate regarding discontinuity in his engagement on daily wages not having been condoned, had accrued to the applicant in the year 2004, and he cannot now be allowed to plead that the cause of action had accrued to him only when another person's case was treated differently by the respondents.

17. We have also gone through the Hon'ble Supreme Court's judgment in **Union of India and Another vs. Mohan Pal & Others** (supra), on which the learned counsel for both the sides had relied upon in their own manner. It is clear that the applicant cannot derive any benefit from this judgment, since he was nowhere on the scene in September 1993, when the Scheme for regularization of services of Casual Labourers working in the various department of Govt. of India came into effect on 01.09.1993. Therefore, we find that the applicant has miserably failed to put forward his case on its own merits, and within time, and he cannot be heard to say that he has been meted out a discriminatory treatment, as compared to

other employees of the respondents' organization, whom he claims to have been treated differently.

18. Therefore, the OA is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.