

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1768/2015

Hon'ble Mr. P.K. Basu, Member (A)

Reserved on: 3.02.2017
Pronounced on: 7.02.2017

Irteza Zulfikar,
D/o Shri Tariq Zulfikar, Age 30 years
House No. 101/B,
Noor Nagar Extension,
Gali No.3, Johri Farm
Jamia, Okhla
New Delhi-110024

...Applicant

(Through Shri Saurabh Upadhyay, Advocate)

Versus

1. RITES Limited
Through its Chairman and Managing Director
A Government of India Enterprise
RITES Bhawan,
Plot No.1, Sector-29
Gurgaon, Haryana-122001
2. Railway Board
Through its Chairman
Ministry of Railways
Rail Bhawan, Raisina Road
New Delhi-110001

.... Respondents

(Through Shri G.S. Chaturvedi with Shri R.M. Bora, Advocates)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed on contractual basis as Assistant Manager (HR) on 3.07.2008 for a period of one year on consolidated salary. Her period of contract was extended from

time to time and was terminated with effect from 31.03.2015 on completion of the sanctioned term. The applicant's claim is for regularization as Assistant Manager (HR) on the basis of her long seven years of service.

2. The above prayer has been made on the following grounds:

- (i) That the applicant has completed seven years of continued service whereas only four years of service was required to be considered for regularization and satisfies all the conditions of regularization;
- (ii) The applicant was relieved from her duties without any prior notice, which is arbitrary and discriminatory in view of Article 14 of the Constitution of India;
- (iii) In a letter dated 28.05.2012 written by the Director (PSU), Railway Board, the applicant was informed as follows:

"The matter has been examined & it is found that at the present, a comprehensive review of Executive Cadre in RITES is in progress. As such, the question of considering regularization of Contract Assistant Managers working in HR Division can only be taken up after finalization of the Cadre Review."

- (iv) The respondents have initiated the process for regularization of Junior Assistant (HR), which is a post lower than the applicant but which indicates

that the respondents are regularizing employees on contract.

It is prayed by the learned counsel that the applicant, at least, has a right to be considered for regularization.

3. Learned counsel for the respondents states that the applicant has not been able to demonstrate that she has a right to be regularized. In fact, she was on contract for a specified period and this contract clearly provided as follows:

"1.3 Term One year from the date of joining or completion of the project, or coming to end of the project for any reason whatsoever, whichever is earlier. Contract can be terminated ahead of the specified period by giving notice of three months by either side or salary in lieu thereof without assigning any reason. However, if you are found medically unfit or adverse report on your antecedents is incorrect, the appointment will be terminated forthwith without any notice or pay. Similarly your services will be terminated without notice or pay in case of misconduct on your part.

xxxx xxxx xxxx xxxx

6. The contract will stand terminated on the expiry of the terms specified above without any notice and you will have no right or claim to continue on the rolls of RITES beyond the specified term.
7. The contractual appointment will not confer on you any lien and/or right for regularization of your service in the Company."

4. The learned counsel for the respondents also relied on the following judgments:

(i) **Vidyavardhaka Sangha and anr. Vs. Y.D.**

Deshpande and ors., 2006 (9) SCALE 641

- The Hon'ble Supreme Court held as follows:

"4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employee or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc."

(ii) **Prasar Bharti Vs. Harikesh B.S. Gautam**

and ors., 2013 (134) DRJ 140 – The Hon'ble Delhi High Court recorded as follows:

"19. The advertisements would reveal to us that the contractual appointments

were being made without indicating the duration of the contract. We are informed that the letters of contractual engagement indicated to the candidates selected that term of engagement was 3 years, which period is over by today.

20. Mr. Sachin Chopra, learned counsel who appears for Prasar Bharti states that the contract period is being extended from time to time.

21.....a contract appointment for a fixed term should ordinarily not result in the contract being extended indefinitely for the reason it may foul the right of other eligible candidates to submit their applications for contractual engagements. The situation would be akin to a Government agency inviting applications to manage a canteen for a period of 3 years but continue with the contract thereafter and that too indefinitely."

(iii) **Bhoop Singh and ors. Vs. Chairman-cum-Managing Director, North Eastern Electric Power Corporation Ltd. and ors., W.P. (C) Nos.6483/2014 and 4488/2014**, where the Hon'ble Delhi High Court observed as follows:

"5.....Therefore, the present case is not a case where one set of contractual employees are being replaced by another set of contractual employees on identical terms, and, the present is also not a case where employees have been appointed for a project and their services are terminated although the project and the funding of the project continues. Therefore, petitioners cannot claim continuation of their employment and cannot force the respondent no.1 to grant them contracts of employment and thus effectively stating that the respondent no.1 cannot change its method of security by giving security of its organization to a security agency."

(iv) **Pooja Saxena Vs. Union Bank of India,**

W.P. (C) 4056/2014 – The Hon'ble High Court of Delhi observed as follows:

"6. The Court has examined the affidavit filed by the respondent/Bank as also the contents of the Circular dated 10.12.2013 issued by the Ministry of Finance, Govt. of India. A bare perusal of the letter of appointment dated 16.6.2011 issued by the respondent/Bank to the petitioner engaging her as a CRE for a period of two years would reveal that her appointment was purely contractual in nature and she had been duly informed that unless the Bank intimates her otherwise, upon expiry of the contractual period, her appointment would automatically cease. In this context, it is relevant to refer to the following clauses of the aforesaid letter of appointment for ready reference :

"1. The engagement will be purely on a contractual basis, for a specific period of two (2) years from the date of year engagement. The Bank, solely at its own discretion and on the basis of your performance, has an option to consider making you a fresh offer to renew this contract for a further period of 2 years on such terms and conditions as may be decided at that time. Your services will be utilized for the Promotion, Marketing and Selling of Third Party Products, as may be decided by the Bank from time to time and in its sole discretion.

2. During the period of your contractual engagement of two years, you will be entitled to a Total Compensation of Package comprising of Fixed component and a Variable component linked to performance as under. The fixed Remuneration will be Rs.20000/- per month as cost of the Company,

consisting of the following components.

xxxx xxxx xxxx

15. This Contract shall automatically cease on the expiry of the contractual period of two years, for which no separate communication will be issued. In the event of the Bank, in its sole discretion, deciding to make an offer to renew the contract for a further period you will be advised about the renewal of the contract in writing. Accordingly, unless the Bank has intimated you about the renewal of this contract in writing upon the expiry of this Contract, your appointment shall automatically cease. You shall not be eligible for any compensation about and/or after the expiry or termination of this contract."

7. It is an undisputed position that the petitioner had accepted the terms and conditions of the aforesaid letter of appointment without any demur and only thereafter, was she appointed as a CRE for a period of two years which term was extended by one year. Clause 15 of the Recruitment Policy of the respondent/Bank that gives an option to the Bank to absorb a contractual appointee cannot be sought to be enforced by the petitioner by claiming that a vested right has accrued in her favour for being absorbed by the respondent/Bank. As noted from the averments made by the respondent/Bank in its affidavit, its decision to absorb some of the CREs who had been working in the Bank in the years 2008, 2011 and 2012 was thwarted by the Ministry of Finance, Govt. of India in the light of the decision of the Supreme Court in the well celebrated case of Uma Devi (supra). Having accepted her contractual appointment with eyes wide open, the petitioner is precluded from claiming regularization to a contractual post."

5. It is stated that the above judgments would clearly indicate that the applicant has no right for consideration for regularization and, therefore, the respondents have not committed any illegality or irregularity in issuing the order dated 31.03.2015, which is under challenge.

6. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

7. The judgments cited above have clearly settled the law. In view of these judgments and also the terms and conditions of appointment, the applicant has no case whatsoever to seek regularization. As regards regularization of Junior Assistant (HR), these are posts at a much lower level and, in any case, it is the prerogative of the respondents, keeping in view the requirement of manpower, at what level they would regularize the services of those on contract, or not.

8. In view of above discussion, the OA does not succeed and is dismissed. No costs.

(P.K. Basu)
Member (A)

/dkm/