

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

OA 2058/2014

Order reserved on: 24.11.2015

Order pronounced on: 1.12.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

Syed Zafaryab Ali
Working as Pharmacist (Unani)
S/o Late Shri Hakim Syed Maqsood Ali
Aged about 51 years
R/o 1752, Gali Mirjumla, Lal Qua,
Delhi-110006

... Applicant

(Through Shri T.D. Yadav, Advocate)

Versus

1. The Chief Secretary,
Government of NCT of Delhi
Delhi Secretariat, I.P. Estate,
New Delhi-110002
2. The Principal Secretary
H&FW Deptt., Govt. of NCTD
Delhi Secretariat, I.P. Estate,
New Delhi-110002
3. The Director (ISM&H)/ Administrator
A&U Tibbia College, Govt. of NCTD
Karol Bagh, New Delhi-110005
4. E.O./ Head of Office
A&U Tibbia College, Govt. of NCTD
Karol Bagh, New Delhi-110005

... Respondents

(Through Shri Ankur Chhibber, Advocate)

ORDER

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

The applicant was appointed by Tibbia College vide order dated 8.10.1997 to the post of Compounder (Unani) on purely temporary and ad hoc basis initially for 180 days. Thereafter, extensions were granted finally upto 31.05.2003, vide order dated 21.04.2003. The applicant filed OA 1491/2003 before this Tribunal challenging the order dated 21.04.2003. In its interim order dated 6.06.2003, this Tribunal directed maintenance of status quo as on 6.06.2003 and the respondents will not replace the applicant by another ad hoc employee. The applicant states that thereafter he filed a C.P. No.312/2003 which was disposed of on 23.04.2004 with the observation that respondents will allow the applicant to join from 23.04.2004. The OA was finally disposed of vide order dated 11.05.2004 with the following directions:

"Once the case of the applicant is yet to be considered i.e. whether he is to be regularized or not, we without delving into any other controversy, direct that the claim of the applicant should be considered if he is to be regularized like other employees of the Ayurvedic and Unani Tibbia College. Necessary exercise in this regard should be done within six months from today. Till then, the services of the applicant for the next six months shall not be terminated. OA is disposed off."

2. Thereafter, the applicant was terminated vide office order dated 10.11.2004 having completed six months, which was challenged by the applicant through OA 2778/2004. The OA was

allowed vide order dated 19.06.2007, the impugned order dated 10.11.2004 was quashed and set aside and respondents were directed to reinstate the applicant in service. However, it was also ordered that he will not be entitled to any back wages. The applicant was reinstated in service with effect from 10.12.2007.

3. The applicant again filed OA No.7/2011 regarding fixation of his pay and the OA was disposed of vide order dated 19.09.2011, directing to treat the applicant as government employee with effect from 23.08.2001 allowing him stepping up of increments for the period he has worked upto the date of his retirement. The Tribunal further directed the respondents to verify whether salary was paid to the applicant for the period 1.06.2003 to 10.11.2004 and decide the issue. The respondents issued order dated 7.05.2013 noting that salary for the period 23.04.2004 to 10.11.2004 has actually been paid to him.

4. The applicant has been, thus, treated as not in service for two separate periods:

- (i) 327 days from 1.06.2003 to 23.04.2004; and
- (ii) 981 days from 10.11.2004 to 10.12.2007

5. Though the order of the Tribunal dated 19.06.2007 in OA 2778/2004 stipulated that the applicant therein will not be entitled to any back wages but during the course of allowing him pay at par with similarly placed counterparts, due to inadvertent mistake he was allowed all the regular benefits even on both of those 321 days and 981 days where no back wages were allowed

to him. Since the error was internal and he was allowed incorrect financial benefits which should not be extended to him hence, proper office order was issued correcting those flaws and no show cause notice was issued to the official.

6. In fact, the original pay fixation order dated 7.12.2012 indicates applicant's pay as on 1.10.2004 (date of increment on notional basis) as Rs.5000/- and order dated 4.09.2013 shows his pay as Rs.17590/- as on 1.07.2013. The revised pay order No.F.13(389)/97-TC/389 dated 3.05.2014 (as amended by order dated 12.06.2014) shows reduced pay as on 1.10.2004 at Rs.4875/- and as on 1.07.2013 at Rs.14200/-. Reduced pay as on 1.10.2004 is shown due to E.O.L. 327 days communicated vide order dated 7.05.2013 and also service with effect from 10.11.2004 to 9.12.2007 (981 days) has been decided as E.O.L. on private affairs, vide order dated 26.02.2014.

7. The short case of the applicant is that in OA 1491/2003, there was a clear direction for considering the claim of the applicant for regularization and in the meantime, not to terminate his services for next six months. Similarly in order dated 6.06.2003 in OA 1491/2003, this Tribunal directed that status quo as on 6.06.2003 be maintained. Therefore, according to the applicant, for the period 1.06.2003 to 23.04.2004, the Tribunal has protected his service and as such, this period should have been counted for all purposes.

8. It is further argued that in OA 2778/2004, which was disposed of vide order dated 19.06.2007, again the termination

order dated 10.11.2004 was quashed and set aside and respondents were directed to reinstate the applicant in service forthwith but without entitlement to any back wages. Therefore, according to the applicant, even the period 10.11.2004 to 10.12.2007 is covered by the order of the Tribunal and this period also should be counted for all purposes such as MACP, increment, pension etc.

9. The applicant has prayed for the following reliefs:

- “(i) To quash and set aside the impugned orders dated 3.05.2014, 26.02.2014, 7.05.2013 and 12.06.2014 (Annexure A colly).
- (ii) to direct the respondents to restore the pay scale of the applicant as per pay fixation order dated 7.12.2012 and pay fixation order dated 4.09.2013. Restore the applicant all the position including pay prior passing impugned orders.
- (iii) to direct the respondent to refund any recovered amount to the applicant forthwith and restore the benefit of MACP-I w.e.f. 16.07.2012.
- (iv) to direct the respondent to count the service period 327 days and 981 days for all the intent and purposes including increment also.
- (v) to direct the respondent to grant all the consequential benefits like seniority, promotion, pay and allowance and increment.”

10. The respondents' argument is that since the period of 327 plus 981 days has been treated as EOL, the applicant does not complete ten years of service and, therefore, is not eligible for

benefit of MACP. Moreover, those periods cannot be counted for increments and other consequential benefits.

11. We have heard learned counsel for the parties and gone through the pleadings available on record.

12. The question to be decided is whether both the stints of 327 days and 981 days during which the applicant has not worked, can be treated as EOL and the benefit of the period can be denied for the purpose of MACP, promotion, seniority etc. or in view of the orders of the Tribunal in OA 1491/2003 and OA 2778/2004, treating him in government service without payment of back wages, should this period not be counted for all purposes.

13. In our view, once the Tribunal has categorically held in OA 1491/2003 vide orders dated 6.06.2003 and 11.05.2004 that the applicant will continue in service and the respondents will not replace his services by another ad hoc employee and thereafter his termination order dated 10.11.2004 was also quashed in OA 2778/2004 and the Tribunal directed reinstatement of the applicant in service forthwith minus back wages, the respondents cannot ignore the aforesaid period of 327 days and 981 days towards continuity of service and that period should be counted for the purpose of MACP, increments, pensionary benefits, seniority and promotion. Original pay fixation orders dated 7.12.2012 and 4.09.2013 are restored and orders dated 3.05.2014, 26.02.2014, 7.05.2013 and 12.06.2014 are quashed.

14. The OA succeeds and is allowed with the above observations. The directions should be implemented within a period of two months from the date of the receipt of a copy of this order. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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