

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2220 of 2014

This the 14th day of October, 2015

HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)

Shri Bashir Ahmad now expired on 18.6.2014
During pendency of the case Sh. Late Shri Gulsher Ahmed
who was superannuated 31.7.2003
on attaining the age of 60 years while last working as CLTS
Gp 'D' in EBS Babugarh Cantt, under Dte
General of RVS (RV-1) QMG's Branch AHQ
Ministry of Defence presently substituted by LR son
Namely Iliyas Mohammad R/o Village Upera Post
Babugarh Cantt. Distt. Hapur (U.P.)

... Applicant

(By Advocate : Sh. V.P.S. Tyagi)

Versus

1. The Union of India
(Through Secretary)
Ministry of Defence,
South Block- New Delhi – 110001.
2. The Director General of RVS (RV-1)
QMG's Branch AHQ
IHQ of MOD (Army)
West Block-III, R.K. Puram,
New Delhi-110066.
3. The Controller General of Defence Accounts,
CGDA, Ulan Batar Marg,
Palam, Delhi Cantt-110010.
4. The Controller of Defence Accounts (Army)
Belvadier Complex,
Meerut Cantt-250001.
5. The Commandant
Equine Breeding Stud
(EBS) Babugarh Cantt.
Distt. Hapur-245201.

... Respondents

■ (By Advocate : Shri Rajender Nischal)

ORDER (ORAL)

MR. JUSTICE L.N. MITTAL, MEMBER (J) :

Bashir Ahmad – Applicant (now deceased and represented by his son as his legal heir) filed this OA claiming the following reliefs:-

- “(a) Direct the Respondents to accord the similar and identical relief in terms of grant of ante-dated regularization by accord of EX-post facto sanction in the case of similarly circumstanced and identically situated casual workers with Temporary status superannuated without grant of pension on their non regularization.
- (b) Pass any order or directions as deemed just & proper in the facts and circumstances of this case with award of the cost in favour of the applicant against the Respondents.”

2. The applicant alleged that he was engaged as Daily Wager (Casual Labourer) in the year 1965. He was conferred temporary status as Casual Labourer (CLTS) w.e.f. 1.7.1996. He superannuated on 31.7.2003 on attaining the age of 60 years. Relying on letter dated 8.4.1991 (Annexure A-4) of the Ministry of Personnel, the applicant claimed that he deserved to be regularized. Reference was also made to order dated 17.9.1993 (Annexure A-5) whereby several such casual labourers were regularized.

3. The respondents in their counter raised preliminary objection that the case of **Mohammad Razak vs. Union of India & Ors.**(OA 427/2004) was decided on 22.4.2004 by this Tribunal on the basis of judgment in the case of **Geeta Rani Santra vs. Union of India and others**, (1997(2) ATJ 308), which has been overruled by the Larger Bench of Five

Members in the case of **Smt. Bhagwati Devi**. Therefore, the applicant is not entitled to benefit claimed by him. It was also alleged that the applicant had earlier filed OA 1786/2007 which was dismissed by this Tribunal vide Order dated 4.10.2007 and, therefore, the instant OA is barred by *res judicata*. On merits, it was alleged that the applicant was engaged as daily rated farm labour on seasonal job on required basis from July 1982 and not from the year 1965. Considering his services as Casual Labourer, he was conferred temporary status as Casual Labourer on 1.7.1996. Pursuant to letter dated 8.4.1991, Army Headquarters released 36 vacancies and accordingly 36 casual employees in order of seniority of their initial date of employment (initially employed since 1980) were regularized vide Order dated 17.9.1993 (Annexure A-5). Various other pleas were also raised.

4. The applicant filed rejoinder to controvert the stand of the respondents and to reiterate his version.

5. We have heard the learned counsel for the parties and perused the case file with their assistance.

6. Counsel for the applicant reiterated that in view of Office Memorandum dated 8.4.1991 (Annexure A-4), the applicant is entitled to be regularized as he was initially engaged in the year 1965. Reference was also made to order (Annexure A-5) regarding regularization of 36 casual employees. Judgments of this Tribunal in the cases of

Balwant vs. Union of India and others (OA No.801/2005) decided on 26.10.2005, **Shri Tilak Ram vs. Union of India and others** (OA No.676/2005) decided on 28.10.2005, **Shri Charan Singh vs. Union of India and others** (OA No.1029/2005) decided on 2.2.2006; and **Mohammad Razad vs. Union of India and others** (OA No.427/2004) decided on 22.4.2004, were relied on by counsel for the applicant. Accordingly, counsel for the applicant sought ex-post facto sanction for regularization of the applicant as done by the respondents in other cases. It was also submitted that pension could not be granted to the applicant without his regularization.

7. On the other hand, counsel for the respondents contended that the instant OA is hopelessly barred by limitation. It was also submitted that the OA is also barred by constructive *res judicata* in view of earlier OA No.1786/2007 filed by the applicant which was dismissed by the Tribunal vide Order dated 4.10.2007. On merits, counsel for the respondents relying on the judgment of Hon'ble Supreme Court in the case of **Indian Council of Agricultural Research & Anr. vs. Santosh**, 2007 (2) AISLJ 231, contended that the respondents cannot be directed to regularize the applicant and to pay him pension merely because he had put in number of years in service and got temporary status. It was also submitted that there was no vacancy for regularizing the applicant before he superannuated.

8. Counsel for the applicant responded by contending that vacancies were released in the years 1998 and 2005 and even thereafter and, therefore, the applicant should be regularized.

9. We have carefully considered the matter.

10. At the outset, it has to be noticed that the instant OA is hopelessly barred by limitation. The applicant's claim for regularization is based on circular dated 8.4.1991 (Annexure A-4). The instant OA was filed on 27.5.2014, i.e., after 23 years as against the limitation period of one year only. In addition to it, the applicant superannuated on 31.7.2003 and the instant OA was filed almost 11 years thereafter, seeking regularization w.e.f. some date prior to his superannuation. Thus, the OA is hopelessly barred by limitation and even no application for condonation of delay in filing the OA was filed. Even otherwise, there is no ground to condone such long and inordinate delay. In this context, it has to be noticed that the applicant had earlier also approached this Tribunal by filing OA No.1786/2007 and, therefore, it cannot be said that he was ignorant of his right. Thus, the instant OA being hopelessly barred by limitation deserves to be dismissed on this ground. Here it may be noted that the applicant has claimed antedated regularization of his services but has not stated any date from which he seeks his regularization.

11. The instant OA is also barred by constructive *res judicata* in view of Order dated 4.10.2007 whereby OA No.1786/2007 filed by the applicant was dismissed. There is

no reason why the claim made in the instant OA could not have been made in the said OA.

12. Even on merits, the applicant cannot succeed. Judgments of the Tribunal in the cases of **Balwant vs. Union of India and others**, **Shri Tilak Ram vs. Union of India and others**, **Shri Charan Singh vs. Union of India and others**; and **Mohammad Razad vs. Union of India and others** (supra) are of no help to the applicant because according to the said judgments, the respondents were directed to consider the case of those applicants for grant of pension by relaxing the requirement of the Rule(s) in terms of Rule 88 of the CCS (Pension) Rules, 1972 being cases of undue hardship. However, in those cases, relief for regularization of services of those applicants was not even granted by the Tribunal. Moreover, the Hon'ble Supreme Court in the case of **Santosh** (supra) has categorically held that casual labourer cannot be granted regularization or pension merely because he had put in 20 years of service and got temporary status. Thus, the claim of the applicant for regularization cannot be accepted.

13. Counsel for the applicant submitted that vacancies were released in the years 1998 and 2005 and thereafter. However, vacancies released after superannuation of the applicant on 31.7.2003 could not be used to regularize him with effect from a date after his superannuation. Moreover, there is neither any pleading nor any material on record to

substantiate the aforesaid contention that any such vacancies were released either in the year 1998 or in the year 2005 or thereafter. On the contrary, when 36 vacancies were released in the year 1993, the same were filled by regularizing casual labourers on the basis of their seniority as per the initial date of engagement vide order dated 17.9.1993 (Annexure A-5). The applicant did not fall in due seniority for regularization in those vacancies.

14. For the reasons aforesaid, we find no merit in the OA which is accordingly dismissed, leaving, however, the parties to suffer their respective costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

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