

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3055/2012

Reserved on 05.05.2016
Pronounced on 13 .05.2016

Hon'ble Dr.Birendra Kumar Sinha, Member (J)
Hon'ble Smt. Jasmine Ahmed, Member (A)

John S/o Sh.D.Prasad,
R/o Permanent address
WZ-799/3, Palam Village,
4-5 Near Shiv Mandir, New Delhi
Presently working
O/o HOD Ahthropological Survey of India,
NWRC 192/1, Kaula Garh Road,
Dehradun-248195.

... Applicant

(By Advocate Shri U.Srivastava)

VERSUS

Union of India and others through,

1. The Secretary,
 Ministry of Tourism & Culture,
 Department of Culture, GOI,
 New Delhi.
2. The Director-in-Charge
 Anthropological Survey of India 27
 Jawaharlal Nehru Road,
 Kolkata.
3. The Head of Department
 Anthropological Survey of India 27
 NWRC 192/1, Kaula Garh Road,
 Dehradun-248195.

... Respondents

(By Advocate: Mr.S.M.Arif)

ORDER

Smt. Jasmine Ahmed, Member (J):

The instant OA is having a long history. The applicant has filed OA 2035/98 which was disposed of on 28.04.1999 with a direction to respondents to consider the case of applicant for re-engagement

subject to availability of work in preference to juniors and fresher keeping in mind previous services of the applicant. Nothing turned out from the outcome of the OA to the applicant. He filed Writ Petition (Civil) no. 1100/2000 which was dismissed by the Hon'ble High Court of Delhi vide order dated 13.3.2000. Review Petition no 7970-71/2000 was filed which has also dismissed by Hon'ble High Court of Delhi. Even SLP (Appeal CA no.159/2001) filed by applicant before the Hon'ble Apex Court which was withdrawn by him dated 23.02.2001. After that he preferred a representation to the respondents for re-engaging him in accordance with the directions issued by this Tribunal on 28.4.1999. As nothing was done he again filed OA no 1911/2001 which was also disposed of with a direction to respondents to consider re-engagement of the applicant as casual labourer, in the event any juniors/freshers are being engaged by them. In pursuance of the order dated 22.03.2002 in OA no. 1911/2001, the respondents issued an order dated 29.07.2003 engaging the applicant as contingent paid staff at North West Regional Centre, Dehradun on no work no pay basis.

2. It is the contention of the counsel for the applicant that till date the applicant is continuously serving the respondents as a casual labourer (contingent paid staff) without any break. He states that the applicant is approaching time and again to the respondents for regularization of his services in person and also through representation and reminder by him as well as through association and also his case has been transferred to respondent no. 2 but nothing has been done. He also states that juniors than him, namely, Naresh Chand Sarkar, Sanjeev Kumar and Sajib Kumar @ Sanjeet & Kulan Burman have

been regularised in terms of the order dated 7.01.2009 passed in Writ Petition (Civil) No. 6517/2005 by Hon'ble Guwahati High Court. He also states that the applicant also preferred a representation for extending the benefit of the above said judgment dated 7.1.2009 to him also but nothing has been heard by the applicant from respondents' side till date. The applicant again filed OA no. 3948/2011 to consider his case for regularization in terms of Guwahati High Court judgment passed in Writ Petition (Civil) 6517/2005 which has also been disposed by this Tribunal with direction to respondent no. 2 to consider the pending representation of the applicant for regularization in terms of judgment passed by Hon'ble Guwahati High Court within a period of three months from the date of receipt of a certified copy of that order. It was also directed while disposing of the representation, respondent no. 2 shall also take into consideration the points raised by the applicant in OA. On 13.08.2012, the respondents passed an order declining the request of the applicant by a non-speaking, unreasoned, bald and cryptic order without application of mind. As the order of the Tribunal in OA no. 3948/2011 was not complied with by the respondents, the applicant filed MA for execution before this Tribunal in OA no. 3948/2011. On 4.09.2012, MA has been disposed of with liberty to applicant to assail the order in a fresh proceeding which resulted in filing of this fresh OA.

3. The counsel for the applicant drew my attention to page no. 10 which is letter dated 13.08.2012 issued in pursuance of the order passed in OA No.3948/2011. Counsel for the applicant states that while disposing of the representation in para no. 2, the respondents

have stated about the Scheme of 1993 of 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993" and stated that the applicant was engaged as daily wage contingent staff and accordingly as per the Scheme of 1.9.1993 as the applicant was not on rolls on the day, his request for regularization could not be acceded to. He stated that the direction to the respondents was to decide the representation of the applicant in pursuance of the Guwahati High Court judgment in Writ Petition(Civil) No. 6517/2005 but the respondents have not even raised a whisper about the Gowahati High Court judgment while passing the speaking and reasoned order dated 13.08.2012. He states that it is the negative attitude of the respondents forced him to file multiple OAs before this Tribunal.

4. Shri S.M.Arif, learned counsel for the respondents vehemently opposes the contention of the applicant and states that the applicant was engaged in the year 1997 at Dehradun. He also states that it is not correct that the applicant is working continuously with the respondents without any break and contends that the applicant is mischievous and trying to get an order from this Tribunal for his regularization. He vehemently opposes the contention of the applicant that any junior of the applicant has ever been regularized. He also states that in pursuance of the direction of the Hon'ble Tribunal dated 22.03.2002, the applicant was re-engaged as contingent paid staff in the office of respondents at Dehradun for a period of 89 days on 'no work no pay" basis w.e.f. 5.8.2003. As there was no regular Group 'D' post, therefore, the applicant was engaged as contingent paid staff only to discharge the occasional work on need basis only for a period

of 89 days and he denied that any junior persons have been regularized. He also states that as the applicant was not in services with the respondents at the time of issuance of OM dated 1.09.1993, hence as per the Scheme he could not be regularized. Learned counsel also states that the applicant's claim in regard to Shri Naresh Sarkar and Shri Sajib Kumar @ Sanjeet is misplaced as both of them are working at Meghalaya, Shillong and he states that page no. 9 of the rejoinder filed by the applicant itself proves that none of the juniors to the applicant have been regularised. At page no. 2 of the judgment in Writ Petition (Civil) No.6517/2005 it has been specifically quoted that "the case of two petitioners before the Tribunal and this court is that the first petitioner was engaged temporarily on 4.12.92 and the second petitioner on 22.12.94 on casual basis as daily wage employees with the respondents." Hence the applicant who was engaged on 27.10.1997 cannot claim seniority over them by any means. Hence the counsel for the respondents states that no illegality has been committed by the respondents as alleged by the applicant.

5. Heard the rival contentions of the parties and perused the documents on record.

6. It is seen that the applicant joined very much after the introduction of the Scheme dated 1.9.1993 as he joined on 27.10.1997 with the respondents. The claim made by the applicant that he should have been regularized as per 1.09.1993 Scheme is misplaced. Even his claim that juniors have been regularized leaving behind him is not correct as it is seen that both Mr. Shri Naresh Sarkar and Shri Sajib Kumar @ Sanjeet are senior to him as they have joined on 4.12.1992 and 22.12.1994. It is also true that the applicant joined at Dehradun

and the applicants in the writ petition, namely, Mr. Shri Naresh Sarkar and Shri Sajib Kumar @ Sanjeet are working at Meghalaya. Hence it cannot be termed that over looking the applicant, others have been regularized. As the applicant is working with the respondents since long, admittedly from 27.10.1997 and 5.08.2003 though as a contingent paid staff, in the interest of justice respondents are directed not to disengage him and allow him to work with them till any regular incumbent joins as per the ratio held in the case of State of Haryana and Others etc. Vs. Piara Singh and Others etc. reported in AIR 1992, Supreme Court, 2130.

7. Accordingly with the above directions, OA stands disposed of.

(Smt. Jasmine Ahmed)
Member (J)

(Dr. Birendra Kumar Sinha)
Member (A)

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