

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.2401/2015
MA No.3875/2018

Order Reserved on: 14.09.2018

Pronounced on:05.10.2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Bishan Singh, Waterman,
Aged about 39 years,
S/o Sh. Bhonta Ram,
R/o Village Dudhola, PO Bhagola,
Distt. Palwal,
Haryana.

... Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

UOI & Ors. through

1. The Secretary,
Ministry of Personnel, Public Grievances,
& Pension,
North Block,
New Delhi.
2. The Director,
Central Bureau of Investigation,
CBI Headquarters, CGO Complex,
Lodhi Road,
New Delhi.
3. The Superintendent of Police,
CBI/SIC.II,
CGO Complex, Block B-V,
Lodhi Road,
New Delhi-110003.

... Respondents

(By Advocate: Sh. Hanu Bhaskar)

ORDER**MA No.3875/2018**

This M.A. has been filed by the applicant, seeking restoration of OA-2401/2015, which was dismissed vide order dated 27.07.2018.

2. In view of the reasons stated in the MA and in the interest of justice, MA No.3875/2018 is allowed and the OA is restored to its original number.

OA No.2401/2015

3. Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- “(i). Declare the action of respondents in terminating the services of applicant without giving any notice as illegal and direct the respondents to regularize the services of applicant as Peon/MTS with all consequential benefits.
- (ii) To direct the respondents to reinstate the applicant in service and consider his claim for regularization as done in other similar cases.”

4. The factual matrix of the case, as noticed from the records, is as under:

4.1 The applicant claims that he was appointed as a peon in the Central Bureau of Investigation (CBI)-respondent organization in the year 2003 and accordingly Annexure A-2 entry pass was issued to him allowing his entry in the office of SP, CBI, SIC-II w.e.f. 20.05.2003 to 21.07.2003. The applicant has further contended that his status was changed to ad-hoc waterman and accordingly

Annexure A-3 identity card was issued to him. He has further contended that he has been continuing to work in the CBI office since 2003. He has further contended that in December, 2014 when he requested the authorities concerned to regularize his services, he was abruptly directed not to come to the office from January, 2015.

4.2 Aggrieved by the alleged arbitrary action of the CBI authorities, the applicant has approached the Tribunal in the instant OA praying for the reliefs, as indicated in para-1 supra.

4.3 In support of the reliefs claimed, the applicant has pleaded the following important grounds:

4.4 The respondents have regularized the services of several juniors of the applicant but have ignored his legitimate claim for regularization and thus the equality principle has been violated.

4.5 Although the applicant has served the respondents for more than 11 years, yet they have not considered him for regularization of his services and thus they have acted in violation of DoPT OM No.3/1/2007-Dir(C) dated 26.04.1984 and 07.06.1988.

4.6 The applicant has been attending to perennial nature of duties, as is evident from his continuation by the respondents for 11 years and hence the action of the respondents in not regularizing his services is illegal, arbitrary and discriminatory.

5. Pursuant to the notices issued, the respondents entered appearance and filed reply, in which they have stated that the applicant was never engaged on casual or ad hoc or permanent basis. He was engaged for getting some petty work done for which an entry pass was issued to him. It was not an identity card. He was paid daily wages for the days that he worked. There is no record available as to his attendance. The applicant was not paid from the budget of the respondents and that the officials of the concerned branch/section were contributing for payment of his wages towards the services rendered by him to them.

5.1 The DoPT OM's referred to by the applicant are not applicable to his case, as he was never appointed or engaged by the respondent-department at any point of time.

5.2 The applicant's services were never terminated as there was no need to do so as he was never engaged by the respondents.

6. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 14.09.2018. Arguments of Shri M.K. Bhardwaj, learned counsel for the applicant and that of Shri Hanu Bhaskar, learned counsel for the respondents were heard. The learned counsel for the parties by and large reiterated their respective pleadings. Additionally, learned counsel for the applicant relied on the judgment of the Hon'ble High Court of Delhi in the case of **Ritu Kushwaha and Ors. v. Union of India & Ors.**,

[W.P. (C)7808/12 & CM No.1965/2012, judgment dated 11.11.2014]. He particularly drew attention of the Tribunal to paras 15& 19 of the judgment, which are reproduced below:

“15. It is rather shocking and surprising that, on the one hand, the DOP&T sought to reject the cases of the petitioners when respondents No.1 & 2 favourably recommended the same for regularization, on the other hand, the DOP&T itself proceeded to regularize several casual employees, who were similarly placed as the petitioners. There is absolutely no justification for adoption of these double standards. It appears that the DOP&T does not practice what it preaches.”

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“19. In view of the aforesaid discussion, we allow the writ petition and quash the impugned order of the Tribunal. We further direct that the respondents shall consider the cases of each of the petitioners for regularization in terms of their policy/scheme framed for regularization in the light of the judgment of the Supreme Court in Umadevi (supra). There shall be no order as to costs.”

7. The learned counsel also relied on yet another judgment of the Hon’ble High Court of Delhi in **Union of India & Anr. v. Surender Prasad & Ors.**, [W.P. (C)1214/2015, judgment dated 09.02.2015]. He particularly drew our attention to the following paragraphs of the judgment, which are reproduced below:

“Ms. Prabha Sharma, Advocate appears on behalf of Mr.Hilal Haider, Advocate for the petitioners and submits that these respondents were initially engaged as casual labourers and on the date of their employment, the recruitment rules did not exist. The learned counsel for the petitioner further submits that the recruitment rules FOR Group ‘D’ posts came into existence on 17th April 2007 and therefore the contention raised by the respondents that they were appointed as per the recruitment rules is incorrect. Counsel also submits that since the appointment of these respondents were casual and on ad-hoc basis, therefore, their services could not have been regularised in view of the DoPT Office Memorandum dated 14.11.2001. Counsel also submits that the

learned Tribunal has not properly appreciated the import of the ratio in the decision of the Supreme Court in the case of State of Karnataka vs. Uma Devi, reported in (2006) 4 SCC 1.”

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“The learned Tribunal after having appreciated the contentions raised by both the parties, took a view that there was no reason for these petitioners to have discriminated the incumbents on the post of Peons alone in the matter when these peons were also appointed against the sanctioned post and their recruitment was through the accepted method. The learned Tribunal also observed that these respondents were found fit with all respects and they were also found medically fit. In this background, the learned Tribunal observed that these respondents could not have been treated as casual labourers as their initial appointment itself was against the sanctioned posts of Peons. The learned Tribunal thus observed that the of the petitioner in terminating the services of respondents is absolutely arbitrary and illegal. The reasoning given by learned Tribunal is a sound reasoning and we hardly find any tangible reason to disagree with the same. However, we are constrained to observe that in such cases the Union of India should not encourage filing of writ petitions, particularly in those cases where there cannot be any dispute with regard to the legal position as well as the facts attracted in the background of the legal principles.”

8. I have considered the arguments of the learned counsel for the parties and have also perused the pleadings. From the photocopies of the identity card issued to the applicant by the respondent-department (p.16-23, Annexure A-3), I notice that these identity cards have been issued for one full calender year. These identity cards have been issued with the signature of Deputy SP of CBI to the applicant like any other official working in the respondent-organization. In view of these documents, I am not inclined to accept the argument put-forth on behalf of the respondents that the applicant was engaged on daily wages for some petty work and that he was paid through contribution by

some officials for the services rendered to them in their personal capacity. Such an argument put-forth by the respondents appears to be too farfetched and totally unacceptable. Accordingly, I reject it. I am convinced from the records that the applicant has worked in the office of the respondents from 20.05.2003 till 20.12.2013 as per the documents available at Annexure A-2 and A-3. Therefore, the request of the applicant for considering regularization of his services in terms of DoPT OM's dated 26.04.1984 and 07.06.1988, referred to hereinabove is required to be considered. The judgments relied upon by the applicant also support his case.

9. In the conspectus of the discussions in the foregoing paras, I allow this OA and direct the respondents to process the claim of the applicant for regularization of his services in accordance with the DoPT OM's dated 26.04.1984 and 07.06.1988. This shall be done within a period of three months from the date of receipt of a certified copy of this order.

10. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

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