

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O. A. No.60/365/2017

Date of decision: 10.04.2018

(Reserved on: 23.03.2018)

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).

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Man Bahadur Khati S/o Sh. Harka Bahadur Khati, age 48 years, presently working as MTS in the office of Geological Survey of India, Operation PH & HP, Sector 33-B, Chandigarh. (Group C).

... APPLICANT

VERSUS

1. Union of India through its Secretary to Government of India, Ministry of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27, J.L. Nehru road, Kolkata (West Bengal).
3. Senior Deputy Director General, Northern Region, Geological Survey of India, Sector E, Aliganj, Lucknow.
4. Director, Geological Survey of India, Operation PH & HP, Sector 33, Chandigarh.

... RESPONDENTS

PRESENT: Sh. D.R. Sharma, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant assails orders dated 31.03.2016 (Annexure A-1) and dated 22.12.2015 (Annexure A-2) where he was held not entitled for grant of HRA and CCA. He sought declaration from this Court that he is entitled to HRA and CCA w.e.f. 01.9.1993 till 16.12.2002 as per para (i) of Temporary Status and Regularization Scheme of Government of India, 1993 (Annexure A-18) and grant him the said benefit along with interest.

2. This case has a checkered history. The applicant was initially appointed as a contingent daily wager in Bhutan on 1.6.1986 and continued as such till 1997. He was granted pay scale of Rs.800+DA which is available to posts of Technical Helper (Group D). On the recommendations of Committee, Director Bhutan Unit of the respondent department placed the applicant in the pay scale of Rs.950-1500, the pay scale of the post of Mechanic in Group 'C' post w.e.f. 1.1.1996. Bhutan Unit of the respondent department was closed on 31.03.2003, the applicant was ordered to report for duty with respondent no.4. In compliance thereto, the applicant reported for duty at Chandigarh as Mechanic in the pay scale of Rs.3050+DA vide order dated 09.12.2002. Before closure of Bhutan Unit, applicant along with other similarly situated person filed O.A. No.927 of 2002 before Calcutta Bench of the Tribunal claiming therein their absorption and regularization of their services. The said OA was allowed vide order dated 12.11.2002, with a direction to consider and grant them benefit of temporary status as per their entitlement. Instead of granting them temporary status from 1993, they were granted temporary status from 2003. Aggrieved against their action, applicants again approached this Tribunal by filing OA No.259/CH/2004 challenging order dated 25.03.2003 whereby both the applicants (in earlier OA) have been absorbed in a lower cadre i.e. Group D instead of post on which they were working and have not been given temporary status from an earlier date. The said OA was disposed of vide order dated 01.02.2005, where their plea was accepted by directing the respondents to protect the pay and allowances of the applicants as they have been working prior to their

being absorbed. Not only this, respondents were also directed to consider their claim for appointment to Group 'C' post if they are otherwise found eligible under recruitment rules. The said order was assailed by UOI by filing CWP No.16419 of 2005 which was disposed of on 28.01.2014 as having been rendered infructuous as the respondents have granted temporary status to the applicants. Subsequent to that, applicants moved contempt petition for non-implementation of order dated 1.2.2015. Vide order dated 12.12.2006 C.P. was also dismissed as respondents have complied with order by granting them temporary status. Dis-satisfied with the order of respondents by regularizing his services in Group 'D' post instead of Group 'C', applicant served legal notice followed by representation, when the same was not decided, he again approached this Tribunal by filing OA No.707/CH/2009 wherein the applicant sought direction from this Tribunal to pay him HRA and CCA w.e.f. 01.9.1993 till 16.12.2002 with interest and also to declare that he will be governed under CCA (Pension) Rules, 1972, in view of the decision of Kolkata Bench of this Tribunal. He also sought a direction for protection of his pay in the pay scale of Rs.3050-4590 instead of lower pay scale of Rs.2550-3200. The said OA was disposed of vide order dated 12.11.2010 holding that applicant will be governed under CCA (Pension) Rules, 1972. With regard to his other claim, the matter was left open with the respondents to pass reasoned and speaking order within a period of three months after filing of representation by the applicant within 15 days. In the case of the applicant that instead of complying with the order of this Court, respondent UOI challenged that order before

High Court which was dismissed on 02.06.2011. The matter was taken up before Hon'ble Supreme Court, where SLP was dismissed on 24.02.2015. Earlier C.P. was adjourned sine die to await decision in SLP. Therefore, after dismissal of SLP, C.P. was revived and it is thereafter, the respondents have passed impugned order dated 22.12.2015 rejecting the claim of the applicant for grant of HRA and CCA, but have accepted his second contention for grant of pension under Old Pension Scheme. Hence this O.A.

3. The respondents while resisting the claim of the applicant did not dispute factual accuracy of the matter. However, they have submitted that benefit of HRA and CCA cannot be granted to applicant as he was not engaged in India and was later on sent on deputation in Bhutan. Since he was engaged at Bhutan, therefore, this benefit cannot be granted to him.
4. We have heard learned counsel for the parties.
5. Sh. D.R. Sharma argued that the impugned order is totally illegal, arbitrary and liable to be set aside as the respondents are making arbitrary discrimination between the similarly placed persons. To elaborate his submission, he submitted that the applicant was initially engaged at Bhutan but he has been given temporary status by counting his service rendered at Bhutan then respondents cannot arbitrarily withheld benefit arising out of regularization of his service. He further argued that while conferring temporary status and subsequently regularizing his services in terms of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), Casual Labourers (Grant of Temporary Status and Regularization) Scheme w.e.f. 1993, the respondents cannot be

allowed to deny the benefit after grant of temporary status on the plea that he was not originally engaged in India and later on sent on deputation at Bhutan. He argued that once service rendered by the applicant has been recognized while considering him under Old Pension Scheme, then the respondents cannot deny him benefit of HRA and CCA. He further argued that similarly placed persons like the applicant who were conferred temporary status along with him and later on regularized were granted the benefit of HRA and CCA whereas the same has been denied to him arbitrarily. Therefore, he prayed that the impugned order be set aside and applicant be held entitled to grant of above benefit.

6. Per contra, Sh. Gupta reiterated what has been stated in the written statement. Apart from that, he submitted that there is not a single case where person like the applicant, who was engaged at Bhutan, was granted benefit of HRA and CCA.
7. I have given my thoughtful consideration to the entire matter and have perused pleadings on board.
8. As noticed above, for all the benefits arose during service, applicant has to knock the door of this Court. Though, he was initially engaged in Bhutan by office of respondent department, later on he was granted temporary status in continuation of orders of Kolkata Bench of the Tribunal and his services were also regularized by counting earlier service. Not only this, his claim for considering him under Old Pension Scheme was also accepted by regularizing his services. Once he has been granted temporary status under Grant of Temporary Status and Regularization Scheme, 1993 then respondents cannot be allowed to take the same very plea which has

already been negated by this Court that he cannot be said to be employee of the department while working in Bhutan. Accepting that he was an employee of Govt. of India though appointed in Bhutan, he was granted all other benefits except HRA and CCA cannot be denied to him merely on the artificial classification that he was not engaged in India and later sent to Bhutan. Once he was held to be employee of Govt. of India then the benefit arising out of regularization of his service has to follow.

9. Therefore, the impugned order denying benefit of HRA and CCA to the applicant is hereby quashed and set aside. Applicant is held entitled for HRA and CCA from the date he became entitled to the same. Let the same be released in favour of the applicant within a period of one month from the date of receipt of a certified copy of this order.
10. Accordingly, the O.A. stands disposed of in the above terms. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 10.04.2018.
Place: Chandigarh.

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