

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No.O.A.350/00707/2015

Date of order: 3.8.2016

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Shri Biswajit Das(SC)
2. Smt. Tania Banerjee(Palit)
3. Smt. Jhumpa Bhattacharjee
4. Smt. Urmi Mukherjee
5. Ananya Majumdar(Saha)
6. Smt. Sutapa Roy (Choudhuri)
7. Smt. Sanghamitra Basuray(Saha)
8. Smt. Mahuya Sarkar (Biswas)(SC)
9. Sri Shyam Charan Hansda(ST)
10. Sri Kartick Shil(OBC)
11. Sri Prosenjit Ghosh
12. Smt. Nabanita Purkayastha(Bhattacharjee)
13. Smt. Rumki Chattopadhyay(Saha)
14. Sri Saptarshi Roy(SC)
15. Sri Sudipta Bayen(OBC)
16. Sri Jayanta Ray
17. Sri Jayabrata Datta
18. Sri Sabyasachi Ghosh(OBC)

- VERSUS -

UNION OF INDIA & OTHERS
(M/O STATISTICS)

For the applicants : Mr. R.S. Joice, counsel
Mr. S.K. Ghosh, counsel

For the respondents : Mr. B.P. Manna, counsel
Mr. B.B. Chatterjee, counsel

ORDER

Per Ms. Jaya Das Gupta, A.M.

The applicants Sri Biswajit Das and others(total eighteen in number) have approached this C.A.T under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) Call for the records bearing No. Order bearing No.C/18011/1/CAT/2012-Admn, Dated 3.12.2014, passed by the 1st respondent, vide ANNEXURE A-8 and impugned Order bearing No.F.No.6/16/2014-Admn./9068, dated 28/29.1.2015, passed by the 5th respondent vide Annexure A-9 peruse and quash the same in so

3m

far as prospective regularization and not protecting the earlier service benefits and service conditions like pay, increment, leave, old pension, ACP/MACP etc., of the applicants as being violative of Article 14, 16(1) & 21 of the Constitution of India;

b) Direct that the applicants be granted the pay and all service benefits from the initial stage of the scale of pay which they were appointed and extend all the service benefits from the date of first appointment and **count their contract service for all service benefits or at least from the date they completed 10 years of service**, with pay revision from time to time, up-to-date with all monetary benefits;

c) Issue such writ/order or direction to count the entire service from the date of their initial appointment as a qualifying service for pension and include the applicants in regular pension scheme i.e. CCS(Pension) Rules, 1972 and to refund all installments with interests deducted under new pension scheme against their will and contrary to law;

d) Declare the imposition of probation on the applicants and the prospective appointment as arbitrary and illegal;

e) Direct that the respondents to count seniority of the applicants in Data Entry Operator (Grade-B) from the respective dates of their appointment in Data Entry Operator (Grade-A)/Data Entry Operator(Grade-B) as no person was engaged between their initial appointment and their regularization or at least from the date of completion of 10 years of service from their initial appointment;

f) Issue such writ, order or direction to the Respondents to regularize the services of the applicants from the date of their initial appointment and extend to them all the service benefits protection on par with regular employee including arrears of Pay & ACP/MACP and other benefits **or at least regularize the services from the date of completion of 10 years of service from their initial appointment** along with protection of the intermediate stage of scale of pre-regularised pay and pension under CCS(Pension) Rule, 1972 counting entire length of service as qualifying service for pension and carry forwarding all the leaves in credited during almost two decades of uninterrupted service to their post-regular service;

g) Leave may be granted to the Applicants to file this application jointly under Rule 4(5)(a) of the CAT(Procedure) Rules 1987;

h) Pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in the interest of justice and equity."

2. It is the case of the applicants that they were working in the office of the Respondent No.3 i.e. the Deputy Director General, Central Statistics Office, Kolkata and even though they worked continuously and were recruited as per rules, they were denied the benefit of retrospective



regularization. Hence, they had filed O.A.No.278 of 2012 before this Tribunal which was allowed. The said order having been affirmed by the Hon'ble High Court, Kolkata and thereafter by the Hon'ble Supreme Court, the applicants were entitled to be regularized from the date of their initial appointment or at least on the day they completed 10 years of service as was directed by the Hon'ble Apex Court in **Secretary, State of Karnataka and Others vs. Uma Devi(3) & Others, (2006)4 SCC 1**. However, the respondents have passed the impugned orders in the guise of regularization from 03.12.2014 taking away the existing service benefits and the long service rendered by them for over 14 to 19 years and reducing their pay and putting them on probation, which is illegal and to that extent the applicants are challenging the said impugned orders seeking for a direction to regularize their services from the date of their initial appointment or on the date of completion of 10 years of service with consequential benefits. This impugned order dated 03.12.2014 was issued as per direction of C.A.T. in CPC.75/2013 arising out of O.A.278/2012. Thus the applicants on being denied regularization from a date earlier to the date of impugned order, have approached this C.A.T. for redressal of their grievance.

3. Per contra, the respondents have submitted that 18 applicants were appointed against the vacancies of regular non-plan posts of Data Entry Operator(DEO) , Group 'A' through Employment Exchange on contract basis on various dates between the years 1995 to 2000 and as and when the vacancies arose. The Applicants No.1,2 and 3 were originally recruited as DEO, Group 'A' in 1995 , Applicants No.4 to 10 were recruited as DEO, Group 'A' in the year 1996, Applicants No.11 to 15 were recruited as DEO, Group 'A' in 1997 and the Applicant No.16 was recruited as DEO,

SW

Group 'A' in 1998. The Applicant No.17 and 18 were recruited as DEO Group 'B' in the year 2000. It is the further contention of the respondents that the duties assigned to DEO Group 'A' and Group 'B' posts were not identical at the time of recruitment of the applicants.

The respondent authorities have also contended that the recruitment procedure for regular and contractual employees was not identical. The applicants were appointed on contractual basis on the basis of selection through local Employment Exchange and not through any open competition at the State or National level. The terms of appointment were purely contractual in nature and the applicants were under clear understanding of the temporary nature of appointment. They were holding the permanent posts on which lien were held by promotees(regular incumbents) to the plan posts which were not permanent posts at that point of time.

The respondent authorities have further contended that the basis for the date of regularization being 09.12.2014 and not earlier is that a contempt petition i.e. CPC.75 of 2013 was filed in respect of the O.A.278/2012 before the Calcutta Bench of C.A.T and the Tribunal passed an order dated 09.12.2014 directing as follows:-

"Learned counsel for the respondents at this juncture submitted that the orders shall be issued by 31.01.15 granting regularization from this date.

We find that since there has been substantial compliance, nothing survives in the present CPC. Accordingly CPC is dropped. Notices, if any issued, are discharged."

Subsequently, in compliance with the order in the CPC 75 of 2013 arising out of O.A.278/2012, an Office Order No.6/16/2014-Admn.1 dated 28/29.01.2015 was issued appointing all the 18 applicants regularly to the post of DEO, Group 'B' w.e.f. 09.12.2014.

257

Based on the above facts that the applicants were appointed initially purely on contractual basis, of which they were aware of and that they were regularized as per direction of the C.A.T. in the CPC.75/2013 arising out of O.A.278/2012. Hence there is no scope of antedating the date of regularization of these applicants and the O.A. should be dismissed.

4. Heard both substantially and consulted the records

The applicant, Sri Biswajit Das had earlier approached this Tribunal in O.A.No.278 of 2012 and an order was passed on 18.02.2013, relevant portion of which is set out below:-

"10. O.A. 501/2008 had been preferred by Smt. B.V. Chandrika, Stenographer Gr.III against her termination. The said O.A. was allowed with a further direction to consider her case for regularization as she had completed more than 12 years of service even though she was described as a contract employee. The Tribunal had held that she was appointed through employment exchange against sanctioned vacancy and had directed her reinstatement in any of the existing vacancy. The writ petition filed by the respondents was dismissed with the observations that "if the applicant is willing to work in Goa against the same sanctioned post, there cannot be any difficulty for the petitioners to regularize her post. In the circumstances, we do not see any reasons to interfere with the orders of the Tribunal.

.....

13. Be that as it may, we find that these posts could not have been filled up through the SSC as the initial appointment was on contract basis. They have, however, been selected after being nominated by the employment exchange and on fulfilling the procedure laid down in the order governing such appointment. Thus even though the appointment has been described as contract appointment they have continued without break for more than a decade. The decision of Hon'ble Karnataka High Court in Writ Petition No.17545/11(The Director General, National Sample Survey Organisation & Ors. vs. Smt. B.V. Chandrika & Ors.) in respect of similarly situated person is referred to in para 10 above. The above decision is binding on this Tribunal. O.A. is disposed of in terms of the said direction. This exercise be completed within three months of the receipt of the order."

257

The above decision of C.A.T., Calcutta Bench in O.A.278 of 2012 was assailed in Hon'ble Calcutta High Court in WPCT.488/2013 wherein the Hon'ble High Court passed an order on 09.12.2013, relevant portions of which is reproduced below:-

"From the records we find that the respondent employees, who were the petitioners before the learned Tribunal are working as Data Entry Operator and claiming regularization of their services. The learned Tribunal following the decision of the Karnataka High Court in **W.P.17545 of 2011(The Director General, National Sample Survey Organisation vs. B.V. Chandrika)** issued certain directions for considering the claims of the respondents herein.

.....

We have heard the learned advocate of the respective parties and find that like Smt. B.V. Chandrika the respondent employees herein also completed more than 12 years of service as contract employee. The respondent employees were also appointed like Smt. B.V. Chandrika through employment exchange.

In the aforesaid circumstances, learned Tribunal has rightly observed that the decision of the Karnataka High Court in the case of **The Director General. National Sample Survey Organisation vs. B.V. Chandrika** would apply in respect of similarly situated persons like the respondent-employees herein. Following the decision of the Karnataka High Court, appropriate directions were issued by the learned Tribunal for redressing the grievances of the respondent-employees.

We do not find any error and/or infirmity in the decision of the learned Tribunal specially when the learned Tribunal followed the decision of the Karnataka High Court which issued appropriate direction while deciding the writ petition filed by a similarly situated person.

We have been informed that the petitioners herein have already complied with the directions passed by the Karnataka High Court in respect of B.V. Chandrika. Therefore, in the present case, the authorities concerned, namely the petitioners herein cannot take a different stand with regard to the identical claims of the respondent-employees herein.

For the aforementioned reasons, we find no scope to interfere with the decision of the learned Tribunal and, therefore, dismiss this writ petition, as we do not find any merit in the same."

257

This judgment of the Hon'ble High Court was assailed in the Hon'ble Supreme Court and the Hon'ble Supreme Court passed the following order:-

..... "The Special leave petition is dismissed. The question of law is kept open."

5. Ld. counsel for the applicants has also brought to our notice that a memorandum was issued to the applicant in this case, Sri Biswajit Das dated 14.11.1995 calling him to appear in the written test for recruitment to the post of Data Entry Operator, Group 'A' for six months on contract basis in the scale of Rs.1150-25-1500 with usual allowances admissible to Central Government employees in Calcutta from time to time. He succeeded in this selection procedure and was appointed in December, 1995 purely on temporary/contract basis for a maximum period of six months. The memorandum dated 14.11.1995 is reproduced below:-

"No.6/35/94-Admn.I(Vol.II)
Government of India
Ministry of Planning
Department of Statistics
Central Statistical Organisation
(Industrial Statistics Wing)
1, Council House Street
Calcutta - 700 001.

Dated, the 14 Nov., 1995

Memorandum

Shri Biswajit Das is informed that the Regional Employment Exchange, Calcutta has sponsored his/her name to this office for recruitment to the post of Data Entry Operator (Grade 'A') for six months on contract basis in the scale of Rs.1150-25-1500/- plus usual allowances admissible to Central Government Employees in Calcutta from time to time.

He/she is, therefore, requested to appear for Written Test to be held on 2.12.1995(Saturday) at 10.00A.M. He/she should bring with him/her the following certificates/documents both in original/attested:

- i) Certificates showing age and Educational qualifications;
- ii) Certificates in favour of claim of S.C./S.T.;

- iii) Certificates in support of claim of age relaxation, if any;
- iv) Employment Exchange Registration Card;
- v) Two copies of recent passport size photograph (one to be pasted in the Identity Card)

No T.A. or any other allowances will be admissible to him/her for appearing at test. Outstation candidates belonging to S.C./S.T. will be entitled for return 2nd class Train fare.

Canvassing in any form will be treated as a disqualification.

Schedule of Examination

<u>Sl.No.</u>	<u>Subject</u>	<u>Marks</u>	<u>Time</u>
1.	Mathematics	15	A composite paper of 1 hour duration (12 Noon to 1.00P.M.)
2.	General Intelligence	15	
3.	Comprehension & writing ability of English		

(K.K. Dutta)
Assistant Director

To
Shri Biswajit Das"

Exactly similar such memorandum was issued to one Subhasis Basu Roy on 21.08.1995 who was also sponsored by the regional Employment Exchange, Calcutta like Sri Biswajit Das, for recruitment to the post of DEO-A in the scale of Rs.1150-25-1500+usual allowances admissible to Central Government employees in Kolkata from time to time. However, Sri Subhashish Basu Roy on being successful in the selection, was appointed on 25.09.1995 on temporary basis and until further orders. He had to serve on probation for a period of two years and ultimately regularly appointed on 13.10.1995 as Data Entry Operator, Group 'A' in the scale of Rs.1150-25-1500 w.e.f. 10.10.1995. The memorandum dated 21.08.1995 reads as under:-

25/9

"No.6/35/94-Admn.I(Vol.II)
 Government of India
 Ministry of Planning
 Department of Statistics
 Central Statistical Organisation
 (Industrial Statistics Wing)
 1, Council House Street
Calcutta - 700 001.

Dated, the 21st August, 1995

Memorandum

Shri Subhashish Basu Roy is informed that the Regional Employment Exchange, Calcutta has sponsored his/her name to this office for recruitment to the post of Data Entry Operator (Grade 'A') in the scale of Rs.1150-25-1500/- plus usual allowances admissible to Central Government Employees in Calcutta from time to time.

He/she is, therefore, requested to appear for Written Test on Saturday, the 9th September, 1995 at 10.00 A.M. He should bring with him the following certificates/documents both in original/attested:

- i) Certificates showing age and Educational qualifications;
- ii) Certificates in favour of claim of S.C./S.T.;
- iii) Certificates in support of claim of age relaxation, if any;
- iv) Employment Exchange Registration Card;
- v) Two copies of recent passport size photograph

No T.A. or any other allowances will be admissible to him for appearing at test. Outstation candidates belonging to S.C./S.T. will be entitled for return 2nd class Train fare.

Canvassing in any form will be treated as a disqualification.

Schedule of Examination

<u>Sl.No.</u>	<u>Subject</u>	<u>Marks</u>	<u>Time</u>
1.	Mathematics	15	A composite paper of 1 hour duration (12 Noon to 1.00P.M.)
2.	General Intelligence		
3.	Comprehension & writing ability of English	15	

(K.K. Dutta)
 Assistant Director

To
 Shri Subhashish Basu Roy"

2057

On comparing the mode of appointment of Sri Biswajit Das and Sri Subhasis Basu Roy it is glaringly apparent that both were sponsored through Employment Exchange and both have undergone the same selection process. But, Sri Subhasis Basu Roy was appointed like a regular appointee whereas Sri Biswajit Das was appointed for six months on contractual basis. The submission of respondent authorities that mode of selection of regular employees was different from the selection of contractual employees, does not appear to be correct, at least for the above case.

A submission was made at the bar by the respondents that the present applicants could not be regularized because as per the Recruitment Rules, the candidates are to be sponsored by the Staff Selection Commission. Going by the same analogy, therefore, Sri Subhashish Basu Roy could not have been regularly appointed as he was also sponsored by the Regional Employment Exchange. But he was actually appointed regularly.

6. However, following the order of the Tribunal in O.A.No.278 of 2012 which was upheld by Hon'ble High Court of Calcutta and thereafter by Hon'ble Apex Court (though the points of law were kept open by the Apex Court) and the contempt application No.CPC.75/2013 arising out of O.A.278/2012, the applicants were regularized on different dates vide order dated 03.12.2014(Annexure A-7), which is set out below:-

"No.C-18013/11/2012-Ad.III
Government of India
Ministry of Statistics & Programme Implementation

Sardar Patel Bhavan, Sansad Marg,
New Delhi, dated the 3rd December, 2014

OFFICE MEMORANDUM

Sub: O.A.No.278/2012 – Shri Biswajit Das & Ors. Vs. UOI & Ors.-reg

In continuation to this Ministry's OM of even number dated 24.06.2014, the CSO(IS Wing) is directed to implement the orders of the Hon'ble CAT, Kolkata, subject to the following conditions:

- (i) The regularization may be only and only in respect of the applicants(petitioners) of this case;
- (ii) The regularization may be from a prospective date i.e. from the date of issuance of the order;
- (iii) Similarly situate persons will not, repeat will not, be given any benefits;
- (iv) Regular appointment may be made in cases where the proper procedure had been followed at the time of initial appointment;
- (v) In other cases, regularization may be allowed only if the conditions prescribed in Uma Devi's case judgment are satisfied;
- (vi) Inter-se seniority may be based on continuous appointment;
- (vii) In case a fresh case is filed in any tribunal or court, directly or indirectly related to the instant case/subject-matter, the same will be appropriately defended and agitated on its own merit, since the question of law has been kept open by the Hon'ble Supreme Court in SLPNo.7686/2014 and keeping in view of DOP&T's standing/applicable rules and guidelines on the subject.

2. CSO(IS Wing) is, further directed to issue appropriate orders in this regard under intimation to this Ministry.

(A.K. MISHRA)
Director"

7. The point to be noted is that regularization was not made effective from the date of their initial appointment on contract but from a prospective date of issuance of the order dated 03.12.2014, against which the applicants have approached this C.A.T.

8. The counsel for the respondents had submitted that during the period there was ^{ju} actually no vacant post of Data Entry Operator in reality as some other regular incumbents who were promoted, were holding their lien to such posts. However, it has been clarified at the Bar that the persons who were promoted and holding lien, never came back to those posts indicating thereby that clear vacancy existed all along.

Against such orders above, Id. counsel for the respondents also informed us about the communication dated 19.07.2016 sent to the advocate for the applicants which is reproduced below:-

"F.No.6/10/2015-Admn.I
Government of India
Ministry of Statistics & P.I.
Central Statistics Office
(I.S. Wingh)

1, Council House Street
Kolkata - 700001
Dated the 19th July, 2016

Subject : O.A.No.350/00707/2015 in the matter of Shri Biswajit Das & Ors. Vs. UOI & Ors.

Sir,

I am directed to refer to your letter dated 12.07.2016 seeking reasons for not allowing the pay as were getting by the applicants of the aforesaid OA during their contractual services-on regularization. You had also sought written instruction as to the difficulties in allowing the pay which the applicants were getting before their regularization.

In this connection, it is informed that the applicants were in contractual service upto 08.12.2014. Vide Hon'ble CAT Order in CPC No.75/2013(OA No.278/2012) dated 09.12.2014 all the applicants were appointed against regular posts of DEO(B) w.e.f.09.12.2014. Therefore, on 09.12.2014(i.e. on the date of their appointment against regular posts) all the applicants were placed in the minimum of the pay band as is usually done in case of new appointment. As they were in contractual service prior to 09.12.2014, they cannot be allowed the pay - received by them as on 08.12.2014 - on their fresh appointment against regular posts on 09.12.2014. Protection of pay for services rendered during contractual period is not permissible as such contractual services were renewed from time to time after

obtaining fresh undertaking from contractual employees for possible termination of services consequent on discontinuation of plan scheme.

Yours faithfully,

(Somen Chowdhury)
Under Secretary"

9. An order was passed by this Tribunal in the present O.A. on 12.05.2015, relevant portion of which is set out below:-

"4. We note that the applicants before the Bangalore Bench sought for protection or their earlier service benefit like, pay, increments, lien, leave, GPF, CGEGIS & Pension etc. and the present applicants have sought for protection of their earlier service benefits of pay, increment, leave, old pension, ACP, MACP etc. As there is hardly any difference between the past service conditions enjoyed by the applicants before the Bangalore Bench and the present applicants, we direct the authorities to examine the grievance of the present applicants and if they are found identically circumstanced to the applicants before Bangalore Bench, a decision may be taken regarding protection of their earlier service conditions alike the applicants before the Bangalore Bench.

5. Let reply be filed within four weeks and rejoinder, if any, be filed within two weeks thereafter. List on 29.06.2015.

6. However, pendency of this O.A. shall not preclude the respondents from granting relief to the applicants at par with the applicants of Bangalore Bench."

10. On considering the stand taken by the two sides, the facts which emerge are that the applicants, Shri Biswajit Das & Others though sponsored through Employment Exchange, were selected through a regular selection process by the Selection Committee and were appointed on contract basis against permanent posts. Though they are on contract, they completed more than 10 years of uninterrupted service.

The respondent authorities have referred to the findings of the Hon'ble Apex Court in the case of Uma Devi(3)[Secretary, State of Karnataka and Others vs. Uma Devi(3) & Others]. Para 53 of the said judgment is reproduced below:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Narayanappa and B.N. Nagrajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of the orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. On taking into consideration the facts of the case and judgment of the Hon'ble Apex Court in *Uma Devi(3)* we quash and set aside the impugned order dated 03.12.2014 according to which regularization was to be made from a prospective date i.e. from the date of issuance of the order.

Based on the stipulations of para 53 of the judgment of the Hon'ble Apex Court in *Uma Devi(3)*, the respondent authorities will consider the case of the applicants for regularization of their services from completion of 10 years of service counting from the initial contractual appointment, with all consequential benefits strictly as per rules, within three months of getting a certified copy of this order.

12. The O.A. is accordingly disposed of. No cost.

3. 8. 2016
(Jaya Das Gupta)
Administrative Member

(Bidisha Banerjee)
Judicial Member