



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 350/00984/2016

Date of order : 13.7.16

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

TUSHAR KANTI BARMAN

VS

UNION OF INDIA & ORS. (NSSO)

For the applicants : Mr.P.C.Das, counsel  
Ms.T.Maity, counsel

For the respondents : Mr.P.Mukherjee, counsel  
Mr.M.K.Ghara, counsel

O R D E R

Ms. Bidisha Banerjee, J.M.

The applicant who served as Field Investigator under the respondents from 2003 onwards till today is apprehending a chance of replacing by another set of contractual employees although with the same terms of engagement, educational qualification and age limit on the basis of which the present applicant was engaged on contractual basis and are continuing as such.

2. During the course of arguments Id. Counsel for the applicant placed before us a decision rendered by this Tribunal in OA 38/15 along with MA 46/15 on 3.8.15 in an identical matter where the applicants Statistical Investigators who were engaged for more than a decade got ceased to be engaged and had prayed that till framing of Recruitment Rules and regular appointment they should be continued. The relevant extract of the order passed in the OA supra is reproduced hereinbelow for clarity :

"2. A summation and summarization of the germane facts absolutely necessary for disposal of the O.A. would run thus:-  
The O.A. has been filed seeking the following reliefs:-

"a) xxx

xxx

xxx

b) To quash and/or set aside the impugned notification issued by the respondent dated June 14 and 8.3.2014 being Annexure A-11 and A-12 of this original application whereby and whereunder they are tried to fill up the vacancies on contractual basis by not considering the case of the present applicants for regularization of their services which is absolutely contrary to the decision passed by this Hon'ble

Tribunal and respective High Courts as well as the law laid down by the Hon'ble Supreme Court that - 'One set of contractual employees cannot be replaced by another set of employees on contract basis.'

- c) To pass an appropriate order directing upon the respondent authority to regularize the service of the applicant who are selected through selection process and completed more than 240 days of service under the respondent department in compliance with the various orders passed by this Hon'ble Tribunal as well as coördinate benches of this Hon'ble Tribunal and respective High Courts as well as the law laid down by the Hon'ble Supreme Court and in compliance with the orders issued by the Under-Secretary, Government of India, Ministry of Statistics & Implementation & Pl dated 25.08.2014 and 26.08.2014 being Annexure A-13 and A-14 of this original application with effect from the date when the applicants have completed 240 days of services and consequential benefits in respect of that;
- d) To pass an appropriate order directing upon the respondent authority not to fill up the vacancies of Field Investigator (ASO and JSO) on contractual basis for regularization in the department in terms of the law laid down by the Hon'ble Supreme Court that - 'One set of contractual employees cannot be replaced by another set of employees on contract basis.'
- e) To quash and set aside the impugned order of termination against the applicants which is against the provision of 25-F of ID Act & Section 2 (oo)(bb) of I.D. Act 1947."

The following decisions were considered by the Bench :-

- (i) Order dated 18.02.2013 passed by the C.A.T., Calcutta Bench in **O.A.278/2012 dated 18.02.2013** - Last para of the said order passed by Calcutta Bench of C.A.T. is extracted hereunder for ready reference:-

"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. Chandnka & 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."

- (ii) Order passed by the Hon'ble Calcutta High Court in **Writ Petition No.57381 of 2013(S-CAT) and Writ Petition Nos.8010-8035 OF 2014(S-CAT) dated 22.04.2014** :

"3. In view of the dismissal of the Special Leave Petition by the Hon'ble Supreme Court of India after the Judgment has been rendered by the Central Administrative Tribunal, Bangalore Bench,

in the present case is based on the decision of the Central Administrative tribunal, Calcutta Bench, we have no other option but to dismiss these petitions. Accordingly, these petitions are dismissed."

(iii) Order dated 09.07.2013 of Hon'ble High Court of Rajasthan in (D.B.) Civil Writ Petition No.13226/2013 -

"In the meanwhile .....(not legible) orders, respondents are directed to allow the petitioners to continue on their respective post of Field Investigator which they were holding on contract basis. However, it will not preclude the respondents from holding regular selection on the post of Field Investigator in accordance with law."

(iv) O.A.No.063/00004/2014 - Last para of the order dated 05.12.2014 passed by Chandigarh Bench of C.A.T. :-

"6. In view of the undertaking given by the respondents as reflected in extracted affidavit coupled with the statement made by learned counsel for the respondents at the bar, the impugned order does not survive any longer and the same is quashed and set aside with further observation that only if the respondents make regular appointments only, then the services of the applicants would be dispense with, if need arises or if the work and conduct of the applicants is not upto mark or any other valid reason.

7. With directions as above, the O.A. stands disposed of with no order as to costs."

The Bench found that in this case, "the applicants were engaged for more than a decade but all of a sudden they were ceased to be engaged, and therefore, this O.A. has been filed. The ld. counsel for the applicants would submit that his clients are entitled to be continued to be engaged till Recruitment Rules are framed and regular appointments are made."

It considered that "the respondents would vehemently oppose the move for allowing this O.A. by piloting his argument thus:-

The order passed by Hon'ble Apex Court in Special Leave Petition (Civil)No.(s) 7686/2014 filed against the order of C.A.T., Calcutta Bench in WPCT No.488/2013 would run thus:-

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

As such, the applicants cannot straightaway place reliance on the earlier orders passed by the Calcutta Bench of the C.A.T. as well as the other benches of the C.A.T. A contractual employee is having no right

to approach C.A.T. for his continuance in job. The Principal Bench of C.A.T. vide order dated 10<sup>th</sup> February, 2014 in O.A.No.1368/2013(Annexure A-10) and Others ordered as under:-

"15. Having regard to the judgment of the Hon'ble Supreme Court in Uma Devi's case (supra) in para 47 aforementioned, we also find that the applicants are neither entitled for regularization of services nor do they have any right to claim any of the aforementioned reliefs sought in the OAs. Hon'ble Supreme Court in Uma Devi's case (supra) have clearly observed as aforementioned that if it is a contractual appointment, it comes to an end at the end of the contract. Such employees do not by their very nature of appointment do not acquire any right in terms of the judgment in Uma Devi's case (supra)."

The Bench held as under :-

The above narration of facts would exemplify and demonstrate portray and convey that except the order of the Hon'ble Principal Bench of C.A.T. the other orders cited before us, are all generally and broadly to the effect that the contractual employees should be continued to be given job till regular appointments are made after framing of Recruitment Rules. Trite the law is that without any Recruitment Rules, no person can be appointed on regular basis; for formulating Recruitment Rules, there are cumbersome procedures of the Government exist. The work study group should study the work load and make the recommendation and then the number of posts should be assessed and qualifications and other requirements for filling up the posts should be specified. Selection Board has to select the people for filling up the posts as per Recruitment Rules. As such without having all these matters in mind simply C.A.T. cannot direct the respondents to absorb the applicants permanently on regular basis. While holding so, we cannot lose sight of the findings and observations made by the C.A.T., Bangalore Bench vide its order dated 21.08.2014 in O.A.No.787 to 802 of 2014 and the operative portion of which is extracted hereunder for ready reference:-

"14. Therefore, after consideration of the facts and circumstances in this case, we are of the view that it would be appropriate if a direction is given to the respondents to consider engagement of the applicants for fresh contractual engagement pursuant to the advertisement issued by the respondents for engagement of Field Investigators purely on temporary basis. **In case the respondents have sufficient ground not to consider any one for such**

**contractual engagement**, they shall pass a specific order specifying the ground on which fresh engagement has not been considered in that particular case. However, we also make it clear that by directing the respondents to consider engagement of the applicants on contractual basis, we are not conferring any right on the applicants for any regular engagement in such posts which has to be done by the Staff Selection Commission following the prescribed Recruitment Rules. The respondents are also free to engage additional persons from the applications received in response to the advertisement.

15. Accordingly, the OA is disposed of in terms of the above directions. The interim order stands vacated. No order as to costs."

As such, the cumulative reading of the aforesaid two orders would unambiguously and unequivocally point out that the persons like the applicants who have been engaged for more than a decade should not be allowed to go without any job all of a sudden and they should not be left high and dry till the Recruitment Rules are framed and the posts are filled up on regular basis.

Ld. counsel for the applicants would reply that the applicants were ceased to be engaged by the respondents, whereupon they approached this forum immediately by filing this O.A. and in such a case the C.A.T. can straightaway give direction to engage them further.

We could see considerable force in the submission of the ld. counsel for the applicants. The order dated 21.08.2014 of the C.A.T., Bangalore Bench is striking a balance between the conflicting claims of both sides and as such adhering to the said precedent, we direct the respondent authority concerned to engage the applicants by fresh contractual engagement purely on temporary basis; in case the respondents have sufficient ground not to consider any one for such contractual engagement, they shall pass a specific order specifying the ground on which fresh engagement has not been considered in that particular case. However, we also make it clear that by directing the respondents to consider engagement of the applicants on contractual basis, we are not conferring any right on the applicants for any regular engagement in such posts which has to be done by the Staff Selection Commission following the prescribed Recruitment Rules. The respondents are also free to engage additional persons from the applications received in response to the advertisement.

If anyone of the applicants is having bad track record in the past services, then the respondents would be justified in not giving employment to them by passing an order to that effect."

3. Per contra the respondents submitted that the applicants had continued under 73<sup>rd</sup> round of NSS. Fresh orders were issued for 74<sup>th</sup> round with a

different job requirement. Ld. Counsel for the respondents placed the respective office memoranda for 73<sup>rd</sup> & 74<sup>th</sup> rounds.

4. During the course of hearing the respondents pointed out a decision rendered by Bangalore Bench of this Tribunal which Ld. Counsel for the applicant responded to by submitting a copy thereof that the said decision has been stayed by the Hon'ble High Court at Karnataka in Writ Petition No. 207385/15 and therefore the order be passed subject to the outcome of the said Writ Petition.

5. We perused the materials on record and gave our anxious consideration to the same. We did not find much difference in the job requirement in the two rounds. The educational qualification required was Graduation with Statistics, Economics and Mathematics, age limit of 21 to 30 years as on 1.7.15 for 73<sup>rd</sup> round which the applicant had already served and 1.7.16 for 74<sup>th</sup> round with provisions for relaxation. Therefore the contention of the Ld. Counsel for the respondents that due to a different job requirement, which the applicants would not be able to fulfil or due to different educational qualification prescribed, the present applicants were not to be engaged as Field Investigator for the 74<sup>th</sup> round of NSS, could not be countenanced. Ld. Counsel, however, further submitted that as per the terms of engagement of the present applicants it was mutually agreed between the parties that the tenure would be fixed from 16.7.15 to 15.7.16 and they accepted that without demur. Such contention would not be acceptable as the respondents have resorted to replacement of one set of contractual employees by a new set of contractual employees which in view of the decision of Hon'ble Apex Court in ***State of Haryana -vs- Piara Singh [(1992) 21 ATC 403]*** and in view of the legal proposition enumerated supra as ordered by this Tribunal in identical matters, we find no reason to permit. It is also not the contention of the respondents that they have framed any Recruitment Rules for the post of Field Investigator or taken steps to fill up the posts on regular basis although it appears that the job is required to be taken up regularly every year.

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6. Accordingly we dispose of this OA with a direction upon the authorities to take up the exercise as directed in OA 38/15 i.e. to engage the applicant further for the 74<sup>th</sup> round of NSS with liberty to deny employment in case of bad track record of any applicant in the past service by passing an order to that effect and thereafter to engage additional person from the applications received in response to the advertisement issued.

7. The OA is accordingly stand disposed of. No order is passed as to costs. However, this order shall be subject to the outcome of Writ Petition No. 207385/15 supra.

8. Before we part we would like to add in haste that it is high time that the respondents should think of creating regular posts for the job and frame Recruitment Rules instead of engaging Field Investigators on contractual basis in batches. Let an honest endeavour be made within six months from this order.

(JAYA DAS GUPTA)  
MEMBER (A)

*to remain*  
(BIDISHA BANERJEE)  
MEMBER (J)

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