

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00602/2017
Chandigarh, this the 10th day of MAY, 2019
(Reserved on: 03.05.2017)

...
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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Siri Narayan s/o Sh. Chandan Lal aged 59 years, Assistant Landscaping Officer, Office of Executive Engineer, Horticulture Division No. 2, Chandigarh. resident of # 2062 Sector 27-C, Chandigarh (Group B)

....Applicant

(Present: Mr. Barjesh Mittal, Advocate)

Versus

1. Union Territory, Chandigarh Administration through its Advisor to the Administrator, U.T. Civil Secretariat, Sector 9-D, Chandigarh.
2. Secretary Engineering, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9-D, Chandigarh.
3. Chief Engineer, Union Territory, Chandigarh, U.T. Civil Secretariat, Sector 9, Chandigarh.
4. The Executive Engineer, Horticulture Division No. 2, U.T. Chandigarh Administration, Sector 23, Chandigarh.

..... Respondents

(Present: Mr. A.L. Nanda, Advocate)

ORDER

P. GOPINATH, MEMBER (A)

1. Applicant in this O.A. is seeking the benefit of extension in Govt. service, for a period of two years, on a yearly basis, by submitting an option within a period of three months before the date of retirement.

2. The notification of Punjab Govt. regarding extension in service was adopted by the Chandigarh Administration, vide letter dated 16.11.2015 (Annexure A-9). Applicant, who attained the age of 58 years on 31.01.2016, was granted one year extension upto 31.01.2017. When applicant exercised the option of granting him second year of extension up to 31.01.2018, the same was not granted and the applicant was relieved from service on 31.01.2017.

3. Aggrieved applicant filed O.A. No. 060/00210/2017 before this Bench, which was disposed of, vide order dated 28.02.2017, with a direction to the respondents to decide the representation of the applicant within a period of two weeks. When such order was not passed, the applicant approached this Tribunal seeking compliance of its order. On 26.04.2017, the respondents issued a charge memorandum under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970. Applicant submitted representation and sought copies of relevant documents for filing reply. The charge-memo was issued on the complaint made by one Lakha Singh, who gave a statement before the Police/Vigilance Authorities to the effect that the contractor used to pay less monthly salary of Rs.6,000/- instead of Rs.8500/-.

4. Applicant argues that his second year extension should not have been connected to this charge-Memo dated 26.04.2017 as his extension was due on a date much before the charge-memo was issued. The charge-memo having been issued in April, 2017 from a prospective date, should not have been made to have retrospective effect from the date of second extension of service i.e. February,

2017. Prayer of the applicant is for grant of 2nd extension in service from 01.02.2017 to 31.01.2018. While enumerating prayer of the applicant, it is necessary to record that this O.A. was filed on 30.05.2017, four months after his first year of extension had expired.

5. Respondents, in their written statement, have drawn attention to the conditions of service of applicant, Para 6 of which reads as under:

“That the aforesaid extension in service to the officer is subject to the condition that in case at any stage of time during extension any criminal case is registered or departmental proceedings under Rule 8 for major penalty proceedings is initiated or served, the extension of the officer will be terminated in terms of the guidelines issued by the Chandigarh Administration.”

6. Respondents submit that the applicant was fully informed about the terms and condition of his post-retiral engagement, and as departmental proceedings were contemplated and charge sheet issued subsequently, his extension was not considered and he was relieved on 31.01.2017, The Chief Vigilance Officer, who informed that no vigilance case is pending against the applicant, on a day after relieving the applicant, on a subsequent date 01.02.2017, forwards a copy of memo along with enclosures recommending initiation of suitable departmental action against the applicant. Only inference that can be drawn is that the CVO received vigilance report of applicant, just after he accorded him vigilance clearance. The matter which was being investigated was the payment of less salary to the contract Malis in comparison to that which had been promised to them.

7. Applicant was proceeded under Rule 8 of PCS (Punishment and Appeal) Rules, 1970, applicable to the employees of the U.T. Chandigarh. Following the charge-sheet, a Committee, considering the applicant's recommendation for extension of service, held that the applicant was unfit for grant of further extension beyond the expiry of the period of one year of extension.

8. We have given thoughtful consideration to the matter and perused the pleadings available on record.

9. Applicant was informed vide clause 6 of the order of re-engagement in service, that his extension in service would be subject to the condition that if any departmental proceeding is initiated, the extension will be terminated. In this matter, since the case of under-payment to the contract Malis was under investigation, hence the extension to the applicant beyond one year of service was not granted, though the charge sheet was issued around three months after expiry of first one year extension. Applicant's argument is that his extension having become due much before the charge-sheet was issued, should not have been stopped, in the knowledge that a matter was under investigation against him.

10. There is no doubt that post retirement, extension of two years on a yearly basis was provided for, under the rules. However, such extension was subject to the condition that a person, who seeks extension, would be clear of any criminal or departmental proceedings. In the case of applicant, in view of complaint of under payment to contract malis, investigation was instituted and as per

Rule 8 of PCS (P&A) Rules a charge sheet was issued. In view of this development, the respondents did not extend the services of the applicant beyond one year of extension in view of the fact that a committee, duly constituted, considered the applicant as unfit for extension in service.

11. During the enquiry, it was brought out that the complainant was a Govt. employee and not one amongst the contract labour engaged by the respondent department. The second issue that has been clarified is that the contract labour was being paid Rs.6000/- and the rest of the money was being deposited on their behalf with the EPFO, an amount which is returned to the beneficiary on finishing the contract. This was briefed by the contractor to all the employees engaged by him and as such the complaint made by Lakha Singh, who was not a contract employee, was not substantiated. Further the applicant who was working as Assistant Land Scaping Officer was not required to make payment to the labour engaged. The payment was to be made to the contractor, who in turn, made payment to the labour engaged by him. As a matter of fact, no record was being maintained by the applicant or office of the respondent regarding remuneration being paid to the contract employees. The enquiry ended with the conclusion that the charges were not proved and the present complaint needs to be filed.

12. The Superintendent of Police also, who was looking into the matter, as ordered to do so, came to the conclusion that (i) They had recorded statements of 08 malis while conducting the inquiry

(ii) The EPF amount deposited by the contractor had been verified with the Regional Office of the EPFO, and EPF amount of 23 Malis, were found to be deposited. And, 12 malis have withdrawn their EPF amount. (iii) The contractor had paid Rs.6,000/-per Mali whereas he was required to pay Rs.6897/- per month to a Mali, (iv) When this short payment was discovered, a recovery of Rs.2,34,359/- has been made from the contractor. From the conclusion drawn by the S.P. (Vigilance), it appears that the complaint was not made by one of the contract Malis but by a Govt. employee, who was not linked to the applicant or the contract labour. The matter was regarding less payment by the contractor to the contract Malis. There was no role of the applicant in the matter. Hence linking the same to the applicant and denying him extension of service appears to be far-fetched and arbitrary.

13. In view of enquiry report submitted by the S.P., Vigilance, it appears that there is no reason to deny extension of service to the applicant. This enquiry report of S.P., Vigilance is dated 02.01.2017 whereas the applicant was seeking extension of service from 01.02.2017 to 31.01.2018. Thus, he could very well have been given the extension of service, but he was relieved from service on 31.01.2017. The action of the respondents in denying extension to applicant is not supported by the report of the S.P., Vigilance who held that allegations against the applicant were not proved. Further, the payment of less amount to contract employees was a complaint against the contractor. The applicant played no role in making payment to the contract labour. Respondent, in the reply

statement, also provides no link to the applicant about the under-payment.

14. In view of the above discussion, the applicant is held entitled to extension of 2nd year in service which has been denied to him on the basis of a vigilance enquiry which in itself has proved that the allegations against the applicant were not substantiated. Since the applicant has not worked for this period of one year service, we are not in favour of giving him full salary after the period of 1st extension expired. We direct the respondents to grant 50% of pay and allowances to the applicant for the 2nd year of extension, which has been denied to him by the respondents arbitrarily. No costs.

(P. GOPINATH)
MEMBER (A)

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(SANJEEV KAUSHIK)
MEMBER (J)
Dated: 10.05.2019

