

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/43/2017

Date of decision: 15.01.2019

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

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Om Parkash, age 66 years, S/o Sh. Sudhan Singh, Resident of Village Juglan, Tehsil and District Hisar, Group D.

... APPLICANT

VERSUS

1. Union of India through its Secretary to Govt., Ministry of Agriculture, Department of Animal Husbandry and Dairying, Krishi Bhawan, New Delhi.
2. Deputy Secretary, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Krishi Bhawan, New Delhi.
3. Joint Secretary, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Krishi Bhawan, New Delhi.
4. Director, Central Sheep Breeding Farm, Post Box No.10, Hisar, District Hisar-125001.

... RESPONDENTS

PRESENT: Sh. S.K. Verma, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. is directed against orders dated 21.09.1998 (Annexure A-3), 05.01.1999 (Annexure A-4) and 18.02.2014 (Annexure A-8) on the ground of the same being illegal, arbitrary, discriminatory and against the spirit of judgment 22.11.2013 passed by the Hon'ble High court in CWP No.15243 of 2001. Further direction has been sought to command the respondents to regularize service of the applicant as LDC with all consequential benefits i.e. pay, revision of pay with interest @18@ p.a. from the date of accrual till realization.
2. Broadly, the facts are not in dispute.

3. Applicant was initially engaged as daily wage worker on 30.07.1979 in Central Sheep Breeding Farm, Hisar. He was thereafter appointed as LDC on ad hoc basis. Applicant, along with other similarly placed persons, directly approached the Hon'ble Supreme Court by filing Writ Petition (C) No.854 of 1986, where they prayed for regularization of their service. Said writ petition was allowed and direction was issued to respondents to consider the case of petitioners for relevant benefit. In pursuance thereto, respondents regularized service of the applicant on 4.4.1988 as Shepherd but not as LDC on which the applicant was working. The applicant raised industrial dispute before labour Court which vide award dated 13.3.1995 was delivered in his favour directing the respondents to consider claim of the applicant for relevant benefit. That award became subject matter before jurisdictional High Court in CWP No.7887 of 1996 at the hands of Director, Sheep Breeding Farm, which was dismissed vide judgment dated 5.8.1997 directing the respondents to consider case of the applicant for appointment as LDC by invoking relaxation clause. Thereafter, the respondents rejected his claim by passing order dated 21.09.1998 and 5.1.1999 and 21.3.2000 reiterating their earlier stand. Aggrieved against these orders, applicant approached jurisdictional High Court by filing CWP No.15243 of 2001, which was allowed vide judgment dated 22.11.2013, where again direction was issued to the respondents to consider case of the applicant for regularization w.e.f. 07.01.1995. In furtherance thereto, respondents have rejected the claim of the applicant vide order dated 18.02.2014. Hence this O.A.
4. Respondents while resisting the claim of the applicant have filed written statement where they have taken a categorical stand that direction was only to consider case of the applicant, therefore, they have rejected the

same because he was not found eligible firstly on the ground that post in question has to be filled up 100% by direct recruitment and secondly, applicant was not having typing speed of 30 words per minute as required under recruitment rules.

5. Learned counsel for the applicant submitted that despite there being two judgments in his favour by the jurisdictional High Court directing the respondents to consider his claim for regularization as LDC, respondents have frustrated the right of the applicant by passing impugned order without applying mind. He submitted that once a view has been given by the Hon'ble High court then respondents have to regularize service of the applicant on vacancy available.
6. Sh. Ram Lal Gupta, reiterated what has been said in the written statement.
7. We have given our thoughtful consideration to entire matter and have perused pleadings available on record.
8. Order passed by the hon'ble High Court in CWP No. 7887 of 1996 gives right to applicant for consideration of his case for regularization as LDC, where findings have been recorded as follows:-

"But after the judgment of the Supreme Court though respondent No.1 had been appointed on regular basis as a Shepherd, he was still appointed on adhoc basis as LDC. Representative orders in this regard w.e.f. 7.1.1995 are Annexure R-2 and R-3 on the record. As already reproduced above, the Central Government has the right to relax any of the provisions of the rules to any class or category of persons. Therefore, the petitioner is at liberty and can if deemed appropriate relax the Rules with respect to the qualifications of respondent No.1 and if deemed appropriate appoint him after relaxation of the Rules. It is entirely within the domain of the Central Government to consider the case of respondent No.1 on its merits. They have to look in to the performance and all relevant factors to decide the same. The decision in this regard must be taken within three months from the date of receipt of this order. This extent the Award of the Tribunal is modified."

Subsequently, when respondents rejected his claim, second petition i.e. CWP No.15243 of 2001 filed by him was also decided in his favour where findings have been recorded as follows:-

"It was, thereafter, the Annexures P-4 and P-5 were passed. In both the orders, it has been mentioned that two things have weighed with the respondents (i) that the appointment of the petitioner as Lower Division Clerk/Cashier was only on ad hoc basis for specified period (2) that the post of Lower Division Clerk was a direct recruitment post. In view of these two facts, the prayer has been declined. There is also no dispute that during the pendency of the petition, the petitioner has since retired. In the written statement, while replying to the allegations of discrimination alleged by the petitioner, it has been mentioned that Mulk Ram (in respect of whom the petitioner claimed the discrimination) was promoted to the post of Lower Division Clerk against the 10% quota for class four employees who have the requisite educational qualifications. This assertion is sharp in contrast to the findings in the impugned order that the post of Lower Division Clerks is direct recruitment post.

I deem it appropriate to direct the respondents to consider the case of the petitioner for regularization as Lower Division Clerk with effect from 07.01.1995 (the first time he was appointed on ad hoc basis as Lower Division Clerk) and, in the case he has the necessary educational qualifications, the order of regularization be passed and consequent benefit be also released to him. The exercise be conducted within four months from the receipt of certified copy of this order. In case, the claim of the petitioner is rejected, speaking order be passed. It is made clear that if any due benefit is not released to the petitioner within the aforesaid time, the petitioner would be entitled to claim the same with interest at the rate of 8% per annum from date/s the amount/s fell due till the payment.

In view of the fact that the case of the petitioner was turned down on completely wrong basis, I deem it appropriate to award Rs.25000/- as cost of the petition to the petitioner.

Petition is allowed in the above terms."

Perusal of the above extracted orders of the Hon'ble High Court make it clear that a positive direction has been given to consider case of the applicant for regularization as LDC and they were directed to invoke relaxation clause while considering the case of the applicant. Though it has been informed by Sh. Ram Lal Gupta, learned counsel for the respondents that in the case of Mulk Ram, with whom applicant is seeking

parity, he has been reverted, therefore, applicant cannot claim parity or allege discrimination qua him. However, perusal of the impugned order makes it clear that claim of the applicant has been frustrated on the ground that he is not having typing speed of 30/w.p.m. and without giving him relaxation of the rules, though the respondents could have waived off this condition of typing test because with regard to qualification, Hon'ble High Court has already directed to invoke relaxation clause, thus their action cannot be approved of.

9. Accordingly, we are of the view that impugned order is non-speaking and has been passed in an arbitrary manner and hence the same is hereby quashed. We direct the respondents to invoke relaxation clause against the available vacancy and consider the case of the applicant for regularization against LDC post from the date he became due. Let the above exercise be carried out within a period of one month from the date of receipt of certified copy of this order. It has been reported that applicant has since retired from service therefore, considering that order is in his favour, respondents are directed to release consequential benefits within one month thereafter.

10. The O.A. stands allowed in the above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 15.01.2019.
Place: Chandigarh.

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