

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/01535/2017

Orders pronounced on:10.05.2019
(Orders reserved on:07.05.2019)

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

1. Anju, age 46 years, w/o Youns Peter, R/o H. No. 229,
Phase I, Mohali, Punjab.
2. Satinder Pal, aged 44 years, S/o Late Sh. Mohan Lal,
resident of House No. 2147, Sector 28-C, Chandigarh.
3. Arvinder Singh, aged 42 years, S/o Sh. Ranjit Singh R/o H.
No. 315, Sector 20-A, Chandigarh.
(Group C)

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Applicants

(BY MR. R.K. SHARMA, ADVOCATE).

Versus

1. Union of India through its Secretary, Ministry of Finance,
Department of Expenditure, North Block, New Delhi – 110
001.
2. U.T. Chandigarh through its Finance Secretary, Sector-9,
Chandigarh.
3. Special Secretary Finance, Chandigarh Administration,
Sector 9, Chandigarh.
4. The District Treasury Officer, Central Treasury, Sector 17,
U.T. Chandigarh.

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Respondents

(BY MR. ASEEM RAI, ADVOCATE).

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

1. The applicants have filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 22.8.2017 (Annexure A-1), vide which their request for appointment as Clerks and drawl of salary at Department of Personnel rates has been rejected and order dated 1.6.2016 (Annexure A-2) vide which their claim for regularization as Clerks has been declined despite series of directions issued by this Tribunal in earlier litigations and to direct the respondents to consider and regularize their services as clerks and to pay minimum of pay scale of the post of Clerk plus DA from the date of their appointment till regularization etc.

2. The facts are largely not in dispute. The applicants submit that in the year 1996, the Central Treasury, Chandigarh was computerized giving rise to requirement of Data Entry Operators. Thus, a requisition was sent to the Employment Exchange in terms of Section 4 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and the applicants were asked to undergo type test and interview. They were then issued appointment letters for the post of Data Entry Operators-cum-Clerks. The particulars of applicants in short are as under :-

Sr.No.	Name and Designation	Date of Joining	Educational Qualification
1.	Satinder Pal Data Entry Operator	11.09.1996	10 + 2
2.	Anju Data Entry Operator	11.09.1996	Prabhakar
3.	Arvinder Singh Data Entry Operator	01.02.1996 to 10.09.1996 03.02.1998	Graduate

3. The applicants were initially appointed for 85 days on contract basis, but the contract was extended from time to time. The service of the applicants continues without break till date and they have unblemished record of service. They have completed more than 20-24 years of service. The minimum qualification for the post of Clerks, as per Central Treasury Chandigarh (Group C Non-Gazetted ministerial Posts) Recruitment Rules, 2001, was matriculation and as such applicants possessed the qualification provided in the rules. Over the years, correspondence went on regarding creation of posts of DEOs in the respondent department and in that regard letter was written as far back as on 10.6.1998 indicating that requirement of permanent staff was there. On 21.8.1998, respondent no 3. Called for comments of respondent no.4 for creation of regular posts which were submitted indicating that creation of regular post is required. However, Respondent no.1 replied on 7.10.1999 that creation of 5 posts of DEO was not possible due to ban on creation of posts.

4. On 12.01.2004, the applicants submitted a detailed representation to respondent No. 2 requesting that since four regular sanctioned posts of Clerks are available, the applicants can be regularized against these since they were performing the duties of Clerks for the last so many years (Annexure A-8). The respondent No. 3 called for the comments from respondent No. 4 in this regard and comments were sent by respondent No. 4 on 17.02.2004 (Annexure A-9) with a mention that the case of the applicants could be considered for regularization against the posts of Clerks available in the office. It was also mentioned that as per the Recruitment Rules, 2001, the minimum qualification for the

post of Clerks is Matriculation in 2nd division, 10 + 2 with typing speed of 30 words per minute and preferably one year diploma in computer applications. The applicants possessed the requisite qualification for the post of Clerks and consequently were recommended for regularization against the post of Clerks. Legal Remembrancer, Chandigarh was tendered opinion on 22.5.2002 (Annexure A-10), that in view of Steel Authority of India Vs. national Union Water Front Workers, JT 2001 (7) SC 268, services of applicants can be regularized and that while carrying regular employment, preference has to be given to contract labour. On 16.8.2004, the applicants submitted yet another representation to respondent No. 2 (Annexure A-11) for regularization in view of recommendations by concerned quarters, but to no avail.

5. The applicants then filed OA No. 186/CH/2005 that was disposed of vide order dated 21.12.2005 (Annexure A-12). In para No. 2, it was mentioned that the applicants have filed replication along with Annexure A-8 which is an order of Department of Medical Education and Research Chandigarh showing merger of the post of Clerks and Data Entry Operators and have redesignated them as Clerk-cum-Storekeeper-cum-Data Entry Operator. In the end, it was stated that though the courts normally do not give such directions which fall within the administrative domain, but considering that Chandigarh Administration has taken a decision for merging the post of Data Entry Operator with other categories, Court hopes that after awaiting the decision of Ministry of Finance, Chandigarh Administration shall take a decision on the prayer of the

applicants also. The applicants continued to await the decision of Union of India and the consequent decision of Chandigarh Administration on the issue of regularization and creation of post for adjustment of the applicants on regular basis. On 22.7.2008 (Annexure A-13), the applicants again submitted a representation that keeping in view their weak financial condition and being contractual employees for more than ten years, a decision for regularization may be taken at the earliest against the sanctioned post of Clerks.

6. On 27.09.2012 (Annexure A-14), respondent No. 4 wrote a detailed letter to respondent No. 2 on the subject of increase in the pay of the applicants. It was stated that salary of the applicants had been fixed from time to time by taking into consideration the minimum of the pay scale of the post of Clerk. On 19.02.2013, respondent No. 4 again wrote to respondent No. 3 on the subject of adjustment of the applicants on regular basis against the sanctioned posts of Clerks (Annexure A-15). However, on 13.07.2013, respondent No. 3, without considering the recommended case of the applicants for regularization against the available vacant and sanctioned posts of Clerks, issued an advertisement for filling 87 posts of Clerks amongst which there were eight posts of Clerks available in the office of respondent No. 4 against which the cases of the applicants were duly recommended for regularization.

7. The applicants then filed OA No. 1079/CH/2013 praying for setting aside the advertisement dated 13.07.2013 (Annexure A-16 herein) with a further prayer that applicants be regularized on the available posts of Clerks that have been advertised in the

impugned recruitment notice. The applicants also filed Contempt Petition No. 193/2013 in OA No. 186/CH/2005 for non-compliance of the earlier order dated 21.12.2005 passed by this Tribunal, directing the respondents to consider the cases of the applicants for regularization. The CP was disposed of vide order dated 5.3.2014, but since no action was taken to regularize the services of the applicants, they filed yet another CP for non-compliance of order dated 05.03.21014 (Annexure A-17) passed in CP No. 193/2013.

8. The applicants then filed M.A.No.124/2014 in C.P. no. 193/2013 for non compliance of order dated 5.3.2014. On 2.7.2014, respondent No. 2 gave personal hearing to the applicants in the course of which the applicants read out paras 8-9 of the order dated 5.3.2014 wherein categorical directions were issued by the Tribunal to the effect that the respondents were given another chance to take steps to regularize the services of the applicants against the available posts of Clerks. The applicants also referred to the judgment of Supreme Court in **SECRETARY, STATE OF KARNATAKA VS. UMA DEVI & ORS.**, (2006) 4 SCC 1 and also the judgment of the Apex Court in **AMARENDRA KUMAR MOHAPATRA VS. STATE OF ORISSA**, 2014(2) SCT 304 and **NIHAL SINGH VS. STATE OF PUNJAB**, 2013(5) SLR 436. Despite this, respondent No. 2 had passed order dated 14.8.2014 rejecting the case of the applicants for regularization solely relying upon the judgment in Uma Devi (supra).

9. Then applicants filed O.A.No.060/0734/2015 which was disposed of on 27.1.2016 (Annexure A-19) commanding the

respondents to consider regularization of the services of the applicants with prospective effect against the vacancies of Clerks in office of respondent no.4 in relaxation of rules. Non-compliance of order, led to filing of C.P. No. 060/00048/2016 titled Satinder pal & others Vs. Bhawna Garg and during pendency of case, the respondents passed order dated 1.6.2016 (Annexure A-2) and as such C.P. was dismissed as infructuous vide order dated 3.6.2016 (Annexure A-20). They plead that regular posts are available and work is there but the respondents are filling those posts from outsourcing as is evident from letters dated 11.8.2016, 30.3.2017, 31.3.2016 and 28.6.2017 (Annexure A-21 Colly). The applicant submitted representation dated 22.12.2016 (Annexure A-22) for adjustment as Clerks. The factual accuracy of availability of posts and working of applicants is duly admitted in letter dated 27.4.2017 (Annexure A-23) and payment of pay and allowances on lower side to applicants is also apparent from letter dated 3.10.2017 (Annexure A-25). However, the claim of applicants has been rejected vide order dated 22.8.2017 (Annexure A-1).

Hence this OA.

10. The respondents No.2 to 4 have filed a written statement. They submit that the directions of this Hon'ble Tribunal have been duly complied with. The applicants cannot approach this Hon'ble Tribunal time and gain for same cause of action. All efforts have been made to adjust the applicants but their claim could be accepted due to existing legal position., as the posts of DEO are not regularly sanctioned and it is not possible to grant them minimum pay scale., The posts of DEOs were never sanctioned.

Had the selection been conducted for the posts of Clerks, the number of candidates would have been higher. The law of regularization has undergone a paradigm shift after decision in Secretary State of Karnataka Vs. Umadevi (2006) 4 SCC 1 and subsequent cases. The impugned orders have been passed after due deliberation and consideration by giving due reasons. The applicants have filed a rejoinder.

11. We have heard the learned counsel for the parties at length and perused the material on file.

12. The learned counsel for the applicants argued that there have been number of directions by this Tribunal in earlier round of litigation, which have attained finality having not been challenged by respondents, to regularize the services of the applicants and as such it is contemptuous and the impugned orders cannot be sustained in the eyes of law, in the face of earlier specific directions, besides being illegal and arbitrary. On the other hand, learned counsel for the respondents argued that they made every possible effort to regularize the services of the applicants but the efforts could not see light of the day due to change in legal position.

13. We have considered the submissions made by both sides and examined the material on file, with the able assistance of both the learned counsel. Certain facts go without any dispute at all that the applicants were appointed during 1996 to 2000 and at that point of time, possessed higher qualifications than the minimum requirement for the posts of Clerks in the recruitment rules. They were appointed and discharged duties and responsibilities of Clerks and are getting the salary of Clerks and

their cases for regularization against the posts of Clerks had been recommended time and again by respondent No. 4. The regular vacant posts of Clerks are available with the respondents against which the applicants discharged their functions as Clerks. Even intra-departmental communications prove that they discharged duties as Clerks and were paid salary equivalent to Clerks. Thus, they discharged duties of Clerks against vacant sanctioned regular post, though respondents claim that posts of DEO are not regular.

14. The learned counsel for the respondents argued and it is duly mentioned in written statement as well, that the issue of regularization of contractual employees has undergone a paradigm shift after decision in the case of Umadevi (supra). To this, learned counsel for applicants argued that in fact, Uma Devi (supra) would come to the aid of the applicants in their claim for regularization considering the long years of service put in by them. Now let us take note of earlier orders passed in favour of the applicants. In the last round of litigation in O.A. No. 060/00734/2014, this Tribunal vide order dated 22.1.2016, directed as under :-

"14. We have carefully considered the pleadings of the parties, the material on record and the submissions made by learned counsel. It is clear that the applicants have been working with the respondent department for periods ranging between 13 to 19 years. They were appointed as Data Entry Operators on contractual basis through a formal process of selection. They have continued to render service as Data Entry Operators-cum-Clerks in the office of respondent No. 4 to the apparent satisfaction of the Head of Department. Time and again, the case for regularization of their services against the vacant post of Clerk in the office of respondent No. 4 has been recommended. The scale of pay of the Data Entry Operators is the same as that of the Clerks. From the Recruitment Notices that are being issued by the respondents from time to time, it is evident that a fairly large number of vacancies of Clerks are available with the Chandigarh Administration and there are some vacancies in the office of respondent No. 4 also.

15. We are in agreement with the respondent Administration that there is no merit in the claim of the

applicants seeking creation of posts of Data Entry Operators as there is no requirement for such posts. However, we are of the view that keeping in mind the long years of service rendered by the applicants with the respondent No. 4 and the dim prospects of their getting job outside the Administration, when they are already overage for employment in Government, the respondents shall consider regularization of the services of the applicants with prospective effect against the vacancies of Clerks in the office of respondent No. 4 in relaxation of the rules. Such consideration may be completed within a period of two months of a certified copy of this order being served upon the respondents. No costs."

15. It is not in dispute at all, that the aforesaid order has not been challenged by the respondents in judicial review in Hon'ble High Court nor its review was sought for by them. In other words, the findings and directions by this Tribunal that *"keeping in mind the long years of service rendered by the applicants with the respondent No. 4 and the dim prospects of their getting job outside the Administration, when they are already overage for employment in Government, the respondents shall consider regularization of the services of the applicants with prospective effect against the vacancies of Clerks in the office of respondent No. 4 in relaxation of the rules."*

16. Now let us examined the impugned order in the light of aforesaid directions. The word 'consider' literally means due application of mind. What the respondents were required to do, in terms of directions of this Tribunal, was to examine as to whether the applicants were eligible in terms of age, qualification, type test etc. and if there was any short fall, the rules could be relaxed. To our surprise, they have not even cared to touch all these aspects. What they have done is to entertain an unfounded fear that "if regularisation is granted in one case, it may be cited as precedent by other persons and this might open up a pandora's box". Then they have reproduced advice of Law Department dated 27.5.2016, which is in consonance with stand taken by

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respondents in earlier round of litigation that applicants cannot claim regularization and again law department too fears that if benefit is extended, they may have to be granted pay and allowances and pension and it would be wrong precedent for others also, which may be extra burden on state exchequer. Thus, claim of applicants has been rejected on the premise that it would not be in public interest. The stand taken by respondents, in the impugned order, to say the least is not only illegal and arbitrary but contemptuous. It appears that the respondents are not even aware about legal process. How can they even think of tinkering with the aforesaid finality attained directions of this Tribunal, on unnecessary and ill-founded pleas. The order, thus, on the face of it cannot be sustained in law. As to whether the findings of a court of law can be subverted by administrative authorities stands settled against them in a number of cases.

17. In Appeal (Civil) No. 4108 of 2007 titled **THE COMMISSIONER, KARNATAKA HOUSING BOARD Vs. C. MUDDAIAH** decided on 07/09/2007, the Hon'ble Apex Court has settled that

(1) a Binding judicial pronouncement between the parties cannot be made ineffective or inoperative with the aid of legislative power by making a provision which, in substance and in reality, overrides and overrules a decision rendered by competent Court

(2) Once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation and

(3) if a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law".

18. Thus, if the respondents had any problem, they could have challenged the order of this Court, which option was not exercised by them. Thus, the benefit already granted to the applicants in earlier round of litigation is binding between the applicants and the respondents and latter cannot take away by passing a simple order impugned in this case, which as held above, is illegal and not sustainable in law.

19. It is well settled that even administrative orders must show application of mind. In respect of administrative orders, Lord Denning M.R. in **Breen v. Amalgamated Engg. Union** (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration". In **Alexander Machinery (Dudley) Ltd. V. Crabtree** 1974 ICR 120 (NIRC) it was observed : "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The law laid down by the lordships of Honourable Supreme Court in the case of **Rai Kishore Jha versus State of Bihar & Others**, 2003(11) CC 519 has again been reiterated in **Ram Phal Vs. State of Haryana**, 2009(3) SCC 258, decided on 6.2.2009 stating that "reason is the heartbeat of every conclusion. Without the same, it becomes lifeless". The findings recorded by this Tribunal in the order extracted above and what has been observed by respondents

would indicate that there is no connection at all between them. The respondents have tried to hoodwink this Court by passing the impugned order. If they had any grievance against order of this Tribunal, they could have challenged the same in judicial review or sought review of order of this Court. They cannot, at all, sit in appeal over orders of this Tribunal by taking advice of their law department, as it may land the department in trouble for taking the judicial forums in a light hearted manner.

20. While reiterating our findings and directions in order dated 22.1.2017, this O.A. is allowed. The impugned orders are quashed and set aside. The respondents are directed to consider and pass orders in accordance with indicated order, with due application of mind, and claim of applicants for grant of parity in pay with similarly situated employees, within a period of two months from the date of receipt of a copy of this order. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

PLACE: CHANDIGARH.
DATED: 10th MAY, 2019

HC*