

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 345 of 2018
OA No. 347 of 2018

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (A)**
 Hon'ble Mr.Swarup Kumar Mishra, Member (J)

OA No. 345/2018: Narendra Sahoo, aged about 30 years, S/o Baishnab Sahoo, Vill – Mugunipur, PO – Bidubazar, PS – Soro, Dist.) Balasore, at present – Data Entry Operator, in the office of CSIR – Institute of Minerals & Materials Technology, Bhubaneswar – 751013, Odisha.

OA No. 347/2018: Tapan Swain, aged about 31 years, S/o Juria Swain, at present – R & B Section-IV, Ministry of Furniture, Unit-III, Bhubaneswar, Khurda, at present - Data Entry Operator, in the office of CSIR – Institute of Minerals & Materials Technology, Bhubaneswar – 751013, Odisha.

.....Applicants.

VERSUS

1. Union of India, represented by Secretary, Ministry of Science & Technology, New Delhi.
2. CSIR - Institute of Minerals & Materials Technology, (Council of Scientific & Industrial Research), Bhubaneswar – 751013, Odisha, represented by its Director.

.....Respondents.

For the applicant : Mr.J.Mohanty, counsel (OA 345/2018)
 Dr.T.C.Mohanty, counsel (OA 347/2018)

For the respondents: Mr.A.Pradhan, counsel

Heard & reserved on : 13.3.2019

Order on :

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The disputes and issues in both these OAs being similar, were taken up for consideration and heard jointly with the consent of the learned counsels for both the sides. Both the OAs are being disposed of by this common order, and for this purpose, the OA No. 345 of 2018 is taken as the leading case.

2. OA 345/2018 has been filed seeking the following reliefs:-

- “(a) That the services of the applicant may be regularized in the present post within a period of six months in view of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in Civil Appeals No. cited above at para 5 of the application. Since the

applicant has come through regular proficiency test/written test and viva voce and quashing of order dated 28.5.2018 under Annexure A/6.

- (b) That alternatively the applicant may be absorbed against one of the eight vacant clerical posts because he has requisite qualification for the said post and his appointment has been made after proficiency test/written test followed by viva voce."

3. The reliefs prayed for in the OA 347/2018 are as under:-

- “(a) That the services of the applicant may be regularized in the present post within a period of six months in view of the judgment of the Constitution Bench of the Hon’ble Supreme Court of India in Civil Appeals No. cited above at para 5 of the application. Since the applicant has come through regular proficiency test/written test and viva voce and quashing of Annexure A/4.
- (b) That alternatively the applicant may be absorbed against one of the eight vacant clerical posts because he has requisite qualification for the said post and his appointment has been made after proficiency test/written test followed by viva voce."

4. The applicant in the OA No. 345/2018 was appointed as a Data Entry Operator vide advertisement notifying a walk-in interview scheduled on 24.12.2012 (Annexure A/1). After the interview, the applicant was selected for appointment as Data Entry Operator vide letter dated 31.12.2012 (Annexure A/2) and was appointed for a period of six months at a consolidated salary of Rs.14,000/- vide letter dated 16.12.2013 (Annexure A/3). The terms and conditions of such engagement as stated in the appointment letter as under:

“Your engagement as Data Entry Operator is for the specific Project ‘Building Electronic Knowledge based Effective Work Places’ for a period of 06 months from the date of joining and co-terminus with the present project or till such time the job performed by you in the project exists and your engagement is specifically extended by the Director, Institute of Minerals & Materials Technology, Bhubaneswar, whichever is earlier.”

5. The applicant continued to be engaged and his services were extended from time to time. He submitted a representation on 23.4.2018 (Annexure A/5) for regularisation of his service. This representation was considered and rejected by the respondents on 28.5.2018 (Annexure A/6), which is impugned in this OA. The grounds mentioned in the OA are that there are eight clerical posts which are vacant under the respondents and the applicant was eligible for the said post. The applicant has also cited the judgment of the Constitution Bench of Hon’ble Apex Court in Civil Appeal No. 1861-2063 of 2001, 3849 of 2001, 3520-3524 of 2002 and Civil Appeal No. 1968 of 2006.

6. The respondents have filed counter opposing the grounds projected in the OA and stating that the applicant was appointed as a Data Entry Operator on purely contractual terms for six months for a specific project ‘Building

Electronic Knowledge based Effective Work Places' and it was stated in the appointment order that the project would come to an end and till such time the engagement of the applicant was specifically extended by the Director from time to time. Reference was also made to the terms and conditions of the engagement issued to the applicant after his selection and stated that after having accepted these terms and conditions. Being aware of the fact that the post was temporary, the applicant had taken up the assignment. It was further stated that regarding continuation of the engagement of the competent authority of the respondents to take a decision and the applicant has no locus standi to dictate such terms to the organisation. It was further stated that many other Data Entry Operators who were appointed along with the applicant have gracefully relinquished the assignment on completion of their tenure. At the time of consideration of the OA an order was passed on 19.9.2018 directing the respondents to continue the service of the applicant and not to terminate the services without leave of the Tribunal, since the applicant's contractual engagement was going to be over on 30.9.2018.

7. The respondents have also filed MA 392/2018 for setting aside the interim order dated 19.9.2018. The applicant has also filed a rejoinder citing the order passed by Hon'ble High Court in Writ Petition No. 6661/2018 filed challenging the order dated 17.5.2017 passed by the Orissa Administrative Tribunal in a similar matter of engagement of Data Entry Operators on outsourcing basis by the Government of Orissa and the Writ petition was disposed of by Hon'ble High Court confirming the order of the Tribunal with the following observations:

"Government functionaries in a welfare state should refrain from adopting hire and fire policy. The action taken amounts to gambling with the career of the employees, some of whom might have been over-aged to compete for employment."

8. We have heard the learned counsels for the applicant and the respondents. The applicant's counsel filed a detailed written note of submission enclosing the copy of the order of the Hon'ble High Court challenging the order of the Orissa Administrative Tribunal directing the respondents to issue the order of regular appointment so far as the applicant is concerned. In that case Data Entry Operators were engaged on outsourcing basis and there was no open and transparent recruitment procedure for selection as in the present case. It was noted by the Hon'ble High Court that before engagement the Data Entry Operators, there was a concurrence from the Finance Department. However, they continued to be engaged for more than a decade. The SLP was filed challenging the above order of Hon'ble High Court and the said SLP was dismissed.

9. We have considered the submissions and also perused the pleadings on record. Undisputedly, the applicants have been engaged after being selected on the basis of an advertisement through walk-in interview in 2012. They were appointed on contractual basis and their services were extended from time to time with approval of the competent authority. There is a submission in para 5 of the OA that there are eight clerical posts which are vacant. But the applicant was engaged as a Data Entry Operator which is not same as Clerk. Nothing is mentioned as to whether posts available for Data Entry Operator at the time of engagement of the applicant. The process of selection through walk-in interview was adopted in case of selection of the applicants and it is not mentioned in the OA whether the recruitment process followed for the applicant is in accordance with the recruitment rules for clerical posts under the respondents. No rule has been furnished to show that the applicant possesses the minimum qualification required for the clerical posts under the respondents. Hence, the claim for regularization of services against vacancies of clerical posts is not tenable.

10. Undisputedly, the applicants have been selected and engaged against the posts available under the project of 'Building Electronic Knowledge based Effective Work Places'. It is also not the case of the respondents that they do not require the services of the applicant since it is stated in para 4 of the counter as under :

"It is pertinent to mention here that the project, which is being referred to by the applicant, is not at all a project of permanent nature. It is purely a time bound project meant for a specific purpose 'Building Electronic Knowledge based Effective Work Places' and the engagement is specifically extended by the director, CSIR-IMMT, whichever is earlier. These facts inter alia other terms and conditions of engagement of Data Entry Operators have been amply made clear to the applicants in the Advertisement No. 02/2012 as well as in the offer of engagement issued to the selected candidates."

The applicants have referred to the decision of Constitution Bench of Hon'ble Apex Court in support of their claim for regularisation. This is the judgment of the Constitution Bench of Hon'ble Apex Court in the case of **Secretary, State of Karnataka & Ors. -vs- Uma Devi & others [2006 (4) SCC 1]**. As per this judgment dated 10.4.2006, regularization of temporary workers who are working continuously for more than 10 years as on the date of decision can be considered by Government as one time measure and further engagement of casual/temporary workers for works of regular nature is to be discouraged. The applicant in the present OA before us are clearly not covered by the judgment in the case of Uma Devi (supra) since they were engaged after the said judgment and hence, are not covered by the judgment.

11. In view of the above discussions, we are unable to accept the prayer for regularization of service of the applicants in the OA and dispose of the OA with direction to the respondents to continue the engagement of the applicant as long as the project 'Building Electronic Knowledge based Effective Work Places' is continuing with the need for the services of Data Entry Officer for the project and to consider extension of their service as done in the past subject to the applicant fulfilling the contractual norms.

12. Both the OAs are disposed of accordingly. There will be no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

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