

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/430/2012

Date of Reserve: 25.03.2019

Date of Order:14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Adwita Prasad Parida, aged about 39 years, S/o. Babaji Charan Parida, a permanent resident of Village-Raghunathpur, PO-R.K.Patana, PS-Patkura, Dist-Kendrapara, - at present continuing as Technician on Contractual basis in LPT TV Centre, Durgapur, Dist-Angul.

...Applicant

By the Advocate(s)-Mr.S.N.Sharma

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi-110 001.
2. Director General, Doordarshan, Copernicus Marg, Mandhi House, New Delhi-110 001.
3. Deputy Director General (Programme), Doordarshan Kendra, Chandrasekharpur, PO-Sainik School, Bhubaneswar-5, Dist-Khurda.
4. Deputy Director General (Engineering) Doordarshan Kendra, Chandrasekharpur, PO-Sainik School, Bhubaneswar-5, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant had earlier approached this Tribunal in O.A.No.90 of 2010 for direction to respondents to pay him the equal pay for equal work as applicable to the counterpart employees (Technicians) working in regular cadre with effect from the date of his initial engagement, i.e., 16.07.1998 with a further direction to regularize his services against the pot of Technician with effect from 15.07.1998. This Tribunal vide order dated 11.03.2010 disposed of the said O.A. as follows:

- "5. Be that as it may, it is the positive case of the applicant that representation filed by him (seeking removal of the injustice caused to him in the subject matter of the Original Applicant) is pending consideration and no order has yet been passed thereon till date. There can be no dispute that the authorities have got inherent power, jurisdiction and competence to remove the injustice caused to an employee on the subject matter of the Original Applicant and admitting this OA otherwise tantamount to arresting the hands of the authorities to exercise the power conferred on them. Therefore, we are of the considered view that ends of justice would be met if we dispose of this OA at this admission stage by calling upon the Respondents to consider the grievance of the Applicant (as raised in his representation and in the present OA) keeping in mind the decision cited above and pass a reasoned order, as expeditiously as possible preferably, within a period of 120 days from the date of receipt of a copy of this order under intimation to the Applicant. Ordered accordingly".

2. Complying with the above direction, Superintending Engineer, Prasar Bharati (Broadcasting Corporation of India), Doordarshan Kendra, Bhubaneswar passed a speaking order dated 31.3.2011/4.4.2011 (A/6) rejecting the request of the applicant as made in his representation. Aggrieved with this, the applicant has approached this Tribunal in the present O.A. praying for the following reliefs:

- i) The impugned speaking order issued by the Respondent No.4 in File No.OA 90/2010 A.I. dtd. 31.3.2011/4.4.2011 under Annexure-6 may be quashed.
- ii) The Respondents may be directed to pay the applicant the equal pay for equal work as applicable to the counterpart employees (Technicians) working in regular cadre with effect from the date of the initial engagement of the applicant, i.e., 15.7.1998.
- iii) To direct the Respondents to regularize the services of the applicant against the post of technician with effect from 15.7.1998 within a short stipulated period.

3. The grounds urged by the applicant in support of the reliefs claimed are that through two posts of Technician are required for maintenance and

functioning of Durgapur LPT, only one person is holding a regular post whereas, he is discharging the entire responsibilities of the vacant post of Technician. Therefore, the findings in the speaking order that the applicant is not performing the same job as that of regular staff and his job is for assisting the regular staff as and when required are not correct. It is the contention of the applicant that the ratio decided by the Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors [200 (L&S) 753] is squarely applicable to his case whereas the respondents have failed to appreciate the same. Since he has entered service under the respondents through a regular process of selection and has completed more than 13 years against the vacant sanctioned post, he is entitled to be regularized against the vacant post of Technician, besides, he also deserves for equal salary for equal nature of work. It has been submitted by the applicant that there being four posts of Technician lying vacant, the respondents should consider his case keeping in view his long period of service. Lastly, he has submitted that he has in the meantime crossed the age limit for any Government job.

4. On the other hand, the respondents by filing a detailed counter have opposed the prayer of the applicant. According to respondents, the applicant had been called for an interview that was held on 26.2.1994 for selection to the post of Technician against three vacant posts and a merit list pursuant to the said selection containing the names of 21 candidates including the applicant was prepared. In the said merit list, the applicant's name figured at Sl.No.15. Out of this, six persons were appointed as Technicians of which three Technicians after rendering service for more than one year tendered their resignation on personal grounds.

5. Smt. P.N.Tripathy and Mrs.Kalpana Das whose names were at Sl.Nos. 7 & 8 of the merit list were given appointment on the basis of order dated 24.3.2006 passed by this Tribunal in O.A.No. 234 of 2005 and O.A.No. 209 of 2006. It has been pointed out that in view of order dated 3.4.1998 passed by this Tribunal in O.A.No.554 of 1997, to meet the miscellaneous Technical work, the applicant was engaged at LPT Tritol on contractual basis vide office order dated 13/14.07.1998 and he was being paid wage @ Rs.1800/- per month. At present, the applicant is working at LPT, Durgapur and is being paid Rs.3150/- per month. Respondents have further submitted that the validity of merit list was only for one year and even if it is considered to give appointment to the candidate on the merit list, it is the person who is at Sl.No.9 is to be appointed and the applicant being placed at Sl.No.15 cannot have any such claim for appointment.

6. As regards the claim of the applicant for regularization of his service based on the orders dated 6.11.1993 in O.A.No.441 of 1992 (Sameer Kumar Sahoo vs. UOI & ors.), O.A.No.562 of 1992 (B.K.Mitra & ors. Vs. UOI & Ors.) and O.A.No.3621 of 1992 (Suryakanta Pattnaik and UOI & Ors.) and having regard to his engagement with effect from 15.7.1998, the respondents have submitted that those decisions are not applicable to the case of the applicant inasmuch as the applicants therein were Casual Artists and the Tribunal decided the matter on the basis of OM dated 9.6.1992 and OM dated 17.3.1994 issued on the subject of regularization of casual Artists. They have contended that the above two memoranda do not relate to Technician and the benefit of regularization therein was granted as a onetime the scheme being approved by the Government.

7. As regards the equal pay for equal work at par with the regular staff, as claimed by the applicant, the respondents have submitted that the applicant is not performing the same job as performed by the regular staff and his job is to assist the regular staff as and when required. They have also stated that the applicant's engagement is purely on contractual basis which he has accepted all these years.

8. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder, memo of citation filed by the applicant as well as the written notes of submissions submitted by the respondents. In the Memo of Citations, the applicant has placed reliance on the decision of the Hon'ble Supreme Court in State of Punjab & Ors. Vs. Jagdish Singh Khehar [2016 (II) ILR-CUT-1127 (SC)] on the principle of equal pay for equal work, the decision of Hon'ble High Court of Orissa in Dr. Prasana Kumar Mishra vs. State of Orissa & ors. [2016 (I) ILR-CUT 373] and the order of this Tribunal dated 12.03.2018 in T.A.Nos.34/2009, 4/2013 & 5/2013 in the matter of regularization. On the other hand, the respondents in their written notes of submission have brought on record that one Lilima Singh, who was at Sl.No.14 of the merit list, had approached this Tribunal in O.A.No.744 of 2016 and this Tribunal directed treat the said OA as representation and to consider the same. Her case having been rejected on the ground that she is at Sl.No.14, she again approached this Tribunal in O.A.No.87/2007. This Tribunal in its order dated 21.09.2010 directed the respondents to reconsider the case of the applicant keeping in mind the observation made and decisions so arrived at upon such consideration, should be communicated to the applicant in a well-reasoned order. Being aggrieved, the respondents approached the Hon'ble Court of Orissa in W.P.(C)

No.15703/2011 and the Hon'ble High Court vide order dated 12.09.2011 has stated the operation of order dated 21.09.2010 passed by this Tribunal in O.A.No.87/2007 and the said writ petition is sub judice by the Hon'ble High Court of Orissa.

9. We have considered the rival contentions. It is to be noted that as regards the claim of the applicant for regularization of his services, the fact that his name is figured at Sl.No.15 of the merit list is not in dispute. It is also a fact on record that one Lilima Singh who is above the applicant being her position at Sl.No.14, her request for regularization having not been considered, she approached this Tribunal in O.A.No.87/2007. The direction issued by this Tribunal to reconsider her case keeping in mind the observations made in the order dated 21.09.2010 having been stayed by the Hon'ble High Court vide order dated 12.09.2011 in writ petition No.W.P.(C) No.15703/2011 filed by Lilima Singh which is now sub judice. In view of this, it would not be proper for the Tribunal to jump to a conclusion regarding regularization of the services of the applicant. Hence, this Tribunal is not inclined to grant any relief to the applicant so far as regularization of his services is concerned and accordingly, this part of the relief is dismissed.

10. As regards the claim of the applicant for equal pay for equal work, we have gone through the decision in State of Punjab & Ors. Vs. Jagjit Singh & Ors. (supra). It has been held by the Hon'ble Supreme Court that the 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value. It is the of the applicant that against two sanctioned posts for LPT,

Durgapur, one regular Technician is in position and against the another sanctioned post, he has been continuing on contractual basis for about more than 13 years even though he has been selected through a duly process of selection. On the other hand, it is the case of the respondents that the applicant is not performing the same job as being formed by the regular staffs and his job is meant for assisting the regular staff as and when required. This being a controversial position, to meet the ends of justice, liberty is granted to the applicant to submit a representation before the respondent-authorities by adducing such evidence to establish that even though he has been working on contractual basis, he is discharging the same nature of duties and responsibilities as that of a regular Technician and in case any such representation is preferred, the respondents shall consider the same in the light of the rules and instructions on the principle of equal pay for equal work and communicate the decision to the applicant within a period of 90 days from the date of receipt of such representation.

11. In the result, while we dismiss the prayer of the applicant for regularization in the post of Technician, we dispose of with the aforesaid direction to the respondents to consider as per law the representation for equal pay for equal work to be filed by the applicant. However, there shall be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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