

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00273/2015

This, the 29th day of March, 2019

Reserved on 06.03.2019

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CORAM:

**HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

...

LR's of Late Shri ChirANJI Lal Chanda

1. Smt. KamlA W/o Late Shri ChirANJI Lal Chanda, aged about 45 years, R/o Keshav Nagar, Phalodi, Jodhpur.
2. Smt. Premlata D/o Late Shri ChirANJI Lal Chanda, W/o shri Mahesh Joshi, aged about 31 years, R/o Dombiwali, Bogaraswadi, Mumbai.
3. Shri Anand Chanda S/o Late Shri ChirANJI Lal Chanda, aged about 28 years, R/o Keshav Nagar, Phalodi, Jodhpur.
4. Smt. Mamta Chanda D/o Late Shri ChirANJI Lal Chanda, W/o Harish Bohra, aged about 26 years, R/o Ved Bhawan, Phalodi, Jodhpur.
5. Miss Pinky D/o Late Shri ChirANJI Lal Chanda, aged about 24 years, R/o Keshav Nagar, Phalodi, Jodhpur.
6. Shri Madhu Sudan Chanda S/o Late Shri ChirANJI Lal Chanda, aged about 22 years R/o Keshav Nagar, Phalodi, Jodhpur.
7. Shri Giriraj Chanda S/o Late Shri ChirANJI Lal Chanda, aged about 20 years, R/o Keshav Nagar, Phalodi, Jodhpur.
8. Pawan Chanda S/o Late Shri ChirANJI Lal Chanda, aged about 17 years, R/o Keshav Nagar, Phalodi, Jodhpur.

...APPLICANTS

BY ADVOCATE : Mr. Suniel Purohit

VERSUS

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, North-Block, New Delhi.
2. Commissioner, Central Excise and Custom Department, Statue Circle, Jaipur.
3. Additional Commissioner, Central Excise and Custom Department, Kuchaman House, Ratanada, Jodhpur.
4. Assistant Commissioner, Central Excise and Custom Department, Customs Division, Ratanada, Jodhpur.
5. Superintendent, Central Excise and Custom Department, Custom Range, Phalodi, District Jodhpur.

RESPONDENTS

BY ADVOCATE : Mr. B.L. Tiwari

ORDER

Per Hon'ble Smt. Hina P. Shah, Member (J)

The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“(i) *by an appropriate order or direction, the respondents may kindly be directed to consider the case of the applicant for the regularization against Group-D post from the date of completion of ten years in service of the applicant.*

(ii) *In the alternatively, without being prejudice from above, by an appropriate order or direction, the respondents be directed to grant the pay of Group-D post to the applicant from the date of his completion of ten years in service.*

(iii) *In the alternatively, without being prejudice from above, by an appropriate order or direction, the respondents be directed to consider the case of the applicant for grant of salary as equivalent as they are paying to the contractual employee engaged for the same work.*

(iv) *any other appropriate order or direction which this Hon'ble Tribunal deem fit, just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.”*

2. The brief facts of the case as stated by the applicant is that this is the fifth round of litigation and still the applicant has to approach this Court for redressal of his grievance. The applicant Shri Chirangi Lal

Chanda (who expired during the pendency of the OA) submits that he is entitled for grant of temporary status and regularization in Group D post, since he was initially engaged as Contingent Farrash on 01.01.1996 on monthly wages of Rs.300/- and which was further increased to Rs.500/- per month from January 1997. It is further submitted that instead of granting him temporary status and regularization he was orally terminated by the respondents. Against which, he has preferred OA No.275/2000 before this Hon'ble Tribunal, which was dismissed vide order dated 22.10.2001. Thereafter, he approached the Hon'ble High Court by way of filing DB Writ Petition No.266/2004, which came to be allowed vide order dated 28 July 2005 and the order of the Tribunal dated 22.10.2001 was quashed and set aside and the matter was remanded back to the Tribunal to decide with the following directions:-

"The Tribunal is directed to decide the original application afresh by considering the rival contentions including objections to the termination of the services after four years continuous service. It is only if the termination is found to be valid that the question of grant of the status of regularization will become germane for consideration. The question as to the validity of the termination order needs a detailed enquiry into the reasons of terminating the services, the nature of the duties discharged by the petitioner in order to find out whether he was engaged and discharging his duties as part time or whole time employee and whether he was engaged in connection with sovereign functions of the State or otherwise, if he was not engaged under the sovereign functions of the State, whether he is entitled to any benefit of the provisions of the Industrial Disputes Act. All these questions are germane for deciding the validity of the termination, which have not been adverted to by the Tribunal, but which Tribunal is required to consider while considering the validity of oral termination after four years of continuous service."

In pursuance of the said order, the Hon'ble Tribunal heard the OA afresh and allowed the same vide its order dated 21.12.2005 and made following observations:-

"11. The upshot of the aforesaid discussion is that the Original Application merits acceptance in part and the same stands allowed

accordingly. The oral termination order dated 10.01.2000 stands set aside. The respondents are directed to reinstate the applicant on the job on which he was last employed and he shall be entitled to all consequential benefits except the back wages. Other reliefs stands declined. No order as to costs.”

Thereafter, the respondents challenged the aforesaid order of the Tribunal before the Hon'ble High Court by way of filing DB Civil Writ Petition No.1814/2006 wherein the Hon'ble High Court dismissed the writ petition vide its judgment and order dated 17.08.2006. The operative part reads as under:-

“In that view of the matter, the finding of the Tribunal that the services of the respondent No.1 has not been invalidly terminated does not call for interference. Since the relief has been granted by denying any emoluments for the period the respondent No.1 has not discharged his functions and claim for regularisation has also not been entertained, we do not find any ground for interference at the behest of the petitioners.”

Subsequently, the applicant made several representations to the respondents for reinstatement but when nothing was done in this regard then the applied filed a Contempt Petition bearing No.02/2007, but the same was dismissed by this Tribunal as having become infructuous vide order dated 22.06.2007 as the applicant was reinstated in service subject to the decision of the SLP filed by the respondent Department. Thereafter the applicant preferred another OA bearing No.227/2008 against the inaction of the respondents for not granting consequential benefits and salary to the applicant and also for grant of regularization against the group D post. The said OA was allowed by this Tribunal vide order dated 13.01.2012 (Annexure-A6). The operative part of the order reads as under:-

“...Therefore, I am not agree with the view expressed by the Hon'ble Member (A) as the Hon'ble Member (A) is in agreement to the extent of

reappointment of the applicant on the job on which he was last employed and is only entitled to a fixed remuneration. The Hon'ble Member (J) has taken care of this aspect and the judgments referred before him have been thoroughly considered by the Hon'ble Member (J) and therefore, I am in agreement with the view expressed by the Hon'ble Member (J) as the Member (J) has rightly directed the respondents that the applicant shall be paid minimum of pay scale allowable to an ordinary Group 'D' employee doing similar job and further directed to consider the case of the applicant for regularization on the post of Group 'D'.”

Against the said order, the respondents preferred DB Civil Writ Petition before the Hon'ble Rajasthan High Court of Rajasthan being DBCWP No.7191/2012, which was partly allowed by the Hon'ble High Court and the matter was remanded back to the Tribunal for fresh consideration vide order dated 21.08.2012 with following observations:-

“In the aforesaid view of the matter we need not discuss all the principles emanating from the cited decisions; and would prefer leaving the entire matter for reconsideration by the CAT in accordance with law.

Accordingly, and in view of the above, this writ petition succeeds to the extent indicated. The impugned orders as passed in OA No.227/2008 are set aside; and OA No.227/2008 shall stand restored for re-consideration by the CAT in accordance with law. The parties through their counsel shall stand at notice to appear before the CAT on 24.09.2012.”

Thereafter, this Tribunal again reheard the matter afresh and vide its order dated 05th March, 2013 made the following observations:

“11. The respondents are directed to constitute the aforesaid committee within 2 months from the date of the receipt of the order and further this Committee shall submit its report to the competent authority as per terms of the reference i.e. working hours of the applicant and nature of duties discharged by him within 4 months time and respondents shall act on the same for considering the wages payable to the applicant within 2 months after submission of report.

12. Even after filing the report and the passing of order by the Competent Authority regarding any payment of wages if the applicant has any grievance, he may file the fresh OA for redressal of the same, if so desired.

It is further ordered that till the determination of disputed question of facts, respondent shall pay to the applicant, from the date of this order, amount equal to minimum wages payable to unskilled workers proportionate to working hours as admitted in their letter dated 20.09.2011 addressed to Additional Commissioner (Personnel & Vigilance), Central Excise & Customs Commissionerate, Jaipur.”

As per the said directions of the Tribunal, as the respondents did not constitute the said committee, the applicant was required to file another contempt petition being CP No.63/2013 for wilful non-compliance and disobedience of the order of this Tribunal. However, during the pendency of the Contempt Petition, the Committee was constituted and report was submitted on 03.09.2013 and thus the Tribunal looking to the said facts disposed of the CP as having become infructuous vide order dated 08.09.2013. Now, the applicant has filed by the present OA against the action of the respondents as his services have not been regularized though he has been rendering his services with the respondents for around 20 years. Further, the applicant was paid on part time basis whereas he is competent enough to work on full time basis. Though he is working and performing his duty diligently but still his services have not been regularized.

3. The respondents have filed their reply on 04.07.2016 and raised preliminary objections stating that the OA is not maintainable as the same is not filed against any written order passed by the respondents as required under Section 19 of the AT Act. As no order was challenged, therefore, for want of any cause of action, the present OA deserves to be dismissed. It has been further submitted that the alleged grievance of the applicant was not under Clause 'q' of Section 3 of Administrative Tribunals Act, 1985. The respondents state that the deceased applicant was not entitled for grant of temporary status and regularization in Group D post as the claim of the applicant was finally declined by this Tribunal as well as Hon'ble High Court of Rajasthan in the earlier round of litigation. It is relevant to state that the Hon'ble High Court

vide its order dated 17.08.2006 had specifically affirmed the finding of this Tribunal dated 21.12.2005 with regard to non entitlement for regularization and as the said finding was not challenged by the deceased at any point of time before the higher Court, therefore, the same had attained finality. It has been further submitted that because of pendency of SLP filed by the respondents against the judgment dated 17.08.2006, the deceased applicant could not be reinstated, but on 15.02.2007, the applicant was reinstated. It has been further stated that though the applicant's claim for regularization was rejected by the Tribunal and Hon'ble High Court as per the Annexures-A/3 and A/4, the applicant had filed fresh OA bearing OA No.227/2008 seeking regularization against group D post, and inadvertently finality of the aforesaid facts had escaped from the notice of Hon'ble Tribunal, therefore, the OA was allowed vide its order dated 13.01.2012. Against the said order, the respondents in third round of litigation had filed DB Civil Writ Petition No.7191/2012 which was partly allowed by the Hon'ble High Court vide its judgment dated 21.08.2012. In compliance of the order of the Hon'ble High Court, the Tribunal disposed of the OA by rehearing it and passed its directions vide order dated 05.03.2013. It has been further submitted in the reply that as per the directions of this Tribunal dated 05.03.2013, the respondents formulated a Committee and the said Committee gave its report on the basis of the work carried out by the applicant. It has been further submitted that the applicant is not entitled to any relief as the specific relief prayed for by the applicant for regularization was clearly denied by this Tribunal in its earlier order dated 21.12.2005 (Annexure-A/3), which had attained finality as having

been confirmed by the Hon'ble High Court vide order dated 17.08.2006 (Annexure-4). Therefore, since the directions of the Hon'ble Tribunal dated 05.03.2013 were complied with by the respondents and they have constituted a Committee, which had given its report on 03.09.2013 and the said order has not been challenged by the applicant in the present OA. Therefore, the present OA deserves to be dismissed.

4. Heard learned counsel for the applicant as well as learned counsel for the respondents and perused the material available on record.

5. Learned counsel for the applicant while reiterating the submission made in the OA states that the report of the fact finding Committee is not clear as the deceased employee was working there since 09.30 to 18.30 hours. But the said report says that the work of giving water and cleaning requires not more than 1 or 2 hours. The report of the Committee itself shows that the time for which the applicant is performing his duties is not certain and though the applicant had placed the material regarding his performance of duty for the entire day, the Committee had overlooked the said facts and merely on assumption stated that the deceased employee was working only for 2 hours work in a day, which is nothing but self contradictory finding recorded by the Committee and therefore, the recommendations of the Committee itself become redundant on such observations. Also as the finding recorded by the Committee are bad in law, the same cannot be accepted and therefore, he prayed that the respondent be directed to regularise the service of the applicant on the post for which he has worked for several years.

6. On the other hand, the respondents stated that the applicant is not holding Civil Post and further stated that as per the judgment of the Hon'ble High Court dated 21.08.2012 passed in DB Civil Writ Petition No. 7191/2012, the matter was reheard by the Tribunal in OA No.227/2008 and passed the order dated 05.03.2013. In pursuance of the directions dated 05.03.2013 of this Tribunal, the respondents had constituted a Committee and the said Committee had given its report on 03.09.2013. It is the submission of the respondents that the applicant has not challenged the said Committee's report but he is only seeking regularization which has already attained its finality in the earlier round of litigation. Therefore, there is no question of any regularization or any other relief to be given to the applicant as the relief prayed for by the applicant has already been settled and attained its finality.

7. Considered the rival contentions of both the parties and perused the pleadings. We have also perused the judgment cited by the learned counsel for the applicant, but the same is not applicable in the present case as the facts and circumstances of the present case are different from those cases.

8. It is clear that there are several rounds of litigation in the present matter pertaining to the question of regularization and as per the order of this Tribunal dated 21.12.2005 pertaining to regularization, the Tribunal had only directed the respondents to reinstate the applicant and that he shall be entitled to consequential benefits except back wages. Though, he had prayed for regularization of his services as per the Scheme of 1993, but the same was declined. The said order was

challenged by the respondents in DB Civil Writ Petition No. 1814/2006 wherein the Hon'ble High Court dismissed the writ petition vide its judgment and order dated 17.08.2006 observing that the finding of the Tribunal pertaining to the service of the present applicant has not been invalidly terminated so it did not call for any interference. The Hon'ble High Court has also observed that denying any emoluments for the period the applicant has not discharged his functions and claim for regularisation has also not been entertained, and Hon'ble High Court did find any ground for interference at the behest of the petitioners. Thereafter there were other round of litigations and the Hon'ble High Court vide its order dated 21.08.2012 in DB Civil Writ Petition No.7191/2012 had remitted back the matter to the Tribunal for consideration of the entire matter in accordance with law. Accordingly, this Tribunal vide its order dated 05th March 2013 had heard the grievance of the applicant afresh and had directed the respondents to constitute a Committee and to submit its report as per the terms of reference i.e. work hours of the applicant and nature of duties discharged by him. Accordingly, the respondents had constituted a three members Committee and the Committee had given its report on 03.09.2013 and the respondents communicated the same to the applicant vide letter dated 18.09.2013 wherein, it is stated that the said Committee had in unanimity opined that it takes two hours for cleaning table, chair and water filling work. The said recommendation has also been accepted by the Commissioner of Customs, Jaipur as communicated vide letter dated 13.09.2013 and in pursuance of said finding the deceased employee was given two hours pro-rata minimum

wages payable to unskilled worker for doing the said work. It is clear that the applicant in the present OA has not challenged the findings of the aforesaid report of the Committee dated 03.09.2013 communicated to him by letter dated 08.09.2013, whereas he has again prayed for his regularisation which had already attained the finality much earlier in the earlier round of litigations i.e. as per order of Hon'ble CAT dated 21.12.2005 and finally by Hon'ble High Court vide its order dated 17.08.2006.

9. As the matter pertaining to regularisation of the services of the deceased employee had already been declined by this Tribunal in earlier round of litigation, which was also affirmed by the Hon'ble High Court and the same was not challenged in the higher forum, therefore, in our opinion the same has attained its finality. Further, in the present case, the deceased employee without challenging the finding of the report of the Committee has again prayed for regularization of his services, which is also not permissible.

10. In view of the discussions made above, we find no merit in the present OA. Accordingly, the same is dismissed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)