



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA**

No.O A /350/965/2015

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member**

Subrata Mondal,
Aged about 42 years,
Son of Shri Kalipada Mondal,
Working as Data Entry Operator
(D.E.O.-Grade-A) in the office of
Central Statistics Office
(Industrial Statistics Wing),
1, Council House Street,
Kolkata – 700 001
And residing at Village – Chandanpukur,
Post Office – Durgapur, Baruipur,
Police Station – Baruipur,
District-24 Parganas (South),
Pin – 743-610.

Applicant

-Versus-

1. Union of India,
Service through the Secretary,
Ministry of Statistics and
Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi – 110 001.

2. The Director General,
Central Statistics Office,
Ministry of Statistics and
Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi – 110 001.

3. The Deputy Director General,
Central Statistics Office
(Industrial Statistics Wing),
1 Council House street,
Kolkata – 700 001.

.....Respondents.

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For the applicants : Mr. P.C. Das, counsel
Mrs. T. Maity, counsel

For the respondents : Mr. P. Mukherjee, counsel

Heard on : 18.02.2019

Order on : 15.3.19

ORDER

Bidisha Banerjee, Judicial Member

Ld. counsels were heard.

2. In this O.A. the applicant has sought for the following reliefs:-

"8.a) To quash and/or set aside the The impugned speaking order dated 8th June, 2015 issued by the Under-Secretary, Central Statistics Office (Industrial Statistics Wing), 1, Council House Street, Kolkata – 700001 whereby and whereunder the claim of the applicant has been rejected by the respondent authority on the ground that the similarly circumstanced person will be given any benefit which is clearly hit the decision rendered by the Hon'ble Supreme Court in a constitution bench reported in 1998 SCC (L&S) Page 226 in the case of K.C. Sharma Vs- Union of India & Ors., where the Hon'ble Apex Court clearly held that the extension of benefit of judgment should be given to the similarly circumstanced persons being Annexure A-13 of this original application;

b) To pass an appropriate order directing upon the respondent authority to regularize the service of the present applicant who was appointed as per the name sponsored by the Employment Exchange and through a selection process conducted by the respondent authority who is still working to the post of Data Entry Operator with effect from the date of joining in respondent department and to give all consequential benefits with effect from the date of his initial appointment in the light of the identical orders passed by this Hon'ble Tribunal in O.A. No. 278 of 2012 on 1802.2013 and as per the decision of Hon'ble Karnataka High Court in Writ Petition No. 17545 of 2011 and order dated 09.12.2013 passed by the Hon'ble High Court at Calcutta in W.P.C. No. 488 of 2013 and the order dated 04.04.2014 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 7688 of 2014 and also order of this Hon'ble Tribunal dated 23rd April, 2014 in O.A. No. 986 of 2012 and the judgment and order dated 23rd April, 2014 passed by the Hon'ble High Court of Karnataka at Bangalore in Writ Petition No. 57382 of 2013 and Writ Petition No. 7998-8001 of 2014 and to give all consequential benefits with effect from the date of initial appointment of the applicant in the respondent department.

c) To quash and/or set aside the impugned office order dated 22.12.2014 being Annexure A-5 of this original application.

d) To pass an appropriate order directing upon the respondent authority not to fill up the vacancy to the post of Data Entry Operator on contractual basis in the respondent department in terms of the law laid down by the Hon'ble Supreme that – 'one set of contractual employees cannot be replaced by another set of employees on contract basis.'

3. The applicant has pleaded as under:-

The present applicant got appointment to the post of Data Entry Operator, Grade-A, against a sanctioned post in a regular pay of Rs.1150-1500 per month. The said appointment was made after recommendation by the concerned Employment Exchange and by a regular selection process conducted by the respondent authorities. Although appointed on contract basis to the post of Data Entry Operator, Grade-A against the sanctioned vacant post, he spent a major part of his service life serving his department and has acquired family which totally depends on him. As such, he preferred representation before the appropriate authority on 22.08.2014 and again on 17.12.2014 for regularisation of his service to the post of Data Entry Operator, Grade-A, in which post he is continuing more than 18 years of service without any break. The respondent authority vide office order dated 22.12.2014 clearly mentioned that after 31st March, 2015 applicant's service can be terminated. Therefore, despite rendering more than 18 years of service without break, the applicant is aggrieved as his services have not been regularised.

4. Eighteen Data Entry Operators, serving identically on temporary contract basis, filed an application before this Tribunal in O.A.No.278 of 2012, which was heard and disposed of by this Tribunal on 18.02.2013, which order is inter alia as follows:-

"Be that as it may, we find that these posts could not have been filled up through the SSC as the initial appointment was on contract basis. They have, however, been selected after being nominated the employment

exchange and on fulfilling the procedure laid down in the order governing such appointment. Thus even though the appointment has been described as contract appointment they have continued without break for more than a decade. The decision of Hon'ble Karnataka High Court In Writ Petition No.17545 of 2011(The Director General, National Sample Survey Organisation & Ors. Vs. Smt. B.V. Chandrika & Ors.) in respect of similarly situated person is referred to in para-10 above. The above decision is binding on this Tribunal. O.A. is disposed of in terms of the said direction. This exercise be completed within three months of the receipt of the order."

Against the said order passed by this Tribunal on 18th February, 2013, the respondents preferred W.P.C.T.No.488 of 2013 before the Hon'ble High Court at Calcutta. The Division Bench of the Hon'ble High court, Calcutta, vide order dated 09.12.2013 affirmed the decision of this Tribunal dismissing the writ petition. The respondents challenged the order before the Hon'ble Supreme Court by filing a petition for Special Leave to Appeal(Civil) No.7686 of 2014. The Hon'ble Supreme Court vide order dated 04.04.2014 dismissed the said petition for Special Leave to Appeal(Civil) No.7686 of 2014. By way of its order this Tribunal allowed regularisation of the services of eighteen Data Entry Operators working on contract basis in this department alike the present applicant. The applicant has, therefore, voiced that since he is working for more than 18 years in the same department, in terms of the decision of full-bench of the Hon'ble Supreme Court in the case of **State of Karnataka vs. Uma Devi**, he is entitled to regularisation and the benefit of the order which was granted by this Tribunal in O.A.No.278/2012 vide order dated 18.02.2012 upheld by the Hon'ble Supreme Court, be extended to the present applicant.

5. We discern that a similarly circumstanced person, serving in the same manner for more than 17 years in the same department, filed an application before this Tribunal in O.A.No.986 of 2012 and this Tribunal vide its order dated 23rd April, 2014 directed the official respondents to consider his case for

regularisation of his service in view of the earlier decision passed by this Hon'ble Tribunal in O.A.No.278 of 2012.

6. We note that Hon'ble High Court of Karnataka at Bangalore also pronounced a judgment and order on 23rd April, 2014 in Writ Petition No.57382 of 2013 and Writ Petition No.7998-8001 of 2014 against the same department upholding the decision passed by Central Administrative Tribunal, Bangalore Bench.

7. Further, this Tribunal in an identical matter being O.A.No.350/198/2015, on 13.02.2015, elaborately passed an order in favour of such applicants by directing the respondents (the same official respondents) to consider the case of applicants in view of the decisions rendered by this Tribunal upheld by the Hon'ble Supreme Court, within a period of three months from the date of communication of its order.

8. The present applicant has simply prayed for extension of benefit of such orders being identically circumstanced. In O.A.No.350/500/2015 this Tribunal vide its order dated 30th March, 2015, directed the respondents to consider his grievance in the light of the decisions(supra) and to pass an appropriate reasoned and speaking order within a period of 2 months from the date of communication of the order.

It has been pleaded that the speaking order issued thereafter, violates the decision rendered by the Hon'ble Supreme Court in a Constitution bench reported in 1998 SCC (L&S) Page 226, in the case of **K.C. Sharma Vs. Union of India & Ors.**, where the Hon'ble Apex Court clearly held that the extension of benefit of judgment should be given to the similarly circumstanced persons, as a judicial pronouncement by the appropriate court of law, upheld by the Hon'ble Supreme

Court, cannot be restricted only to its parties and it would apply to all who are similarly situated i.e. in rem.

It was argued that the respondents issued the impugned speaking order on 8th June, 2015 whereby and whereunder they have admitted that the present applicant is a similarly circumstanced vis-à-vis applicants of O.A.No.278 of 2012, but refused to grant identical benefits, as the present applicant was not a party to the earlier orders, which was highly discriminatory.

9. The respondents have failed to identify any factor other than what has been indicated in the speaking order, as to why the applicants would not deserve identical treatment. The records of the matter were perused. We have failed to decipher from the records any materials suggesting that the applicant does not deserve identical relief. Therefore, for parity of reasons, the present applicant deserves relief he has sought for.

10. It is trite, axiomatic and settled law that no macro compartmentalisation on the basis of a micro distinction can be allowed to sustain unless the same is based on any intelligible differentia.

11. Hence, we allow the O.A. and direct the authorities to extend the benefit of the decisions cited by the applicant, by issuing appropriate orders in accordance with law, within three months from the date of communication of this order. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member