

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00295/2018

Date of Order: This, the 15th day of March 2019

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER**

Uma Nath Rai
S/o Sri Sital Prasad Rai
Casual Worker, O/o the Anthropological
Survey of India, North Eastern Regional Centre
Mowblei, Shillong – 21, Meghalaya.

...Applicant

By Advocates: Mr. S. Sarma, Sr. Advocate, Mr. H.K. Das, Mrs. B. Devi,
Mr. U. Pathak and Ms. J. Kalita

-VERSUS-

1. Union of India
Represented by the Director
Anthropological Survey of India
Government of India
Indian Museum Campus
27, J.L. Nehru Road, Kolkata – 700016.
2. The Deputy Director
Anthropological Survey of India
Mowblei, Shillong – 21, Meghalaya.
3. The Head of Office
Anthropological Survey of India
Ministry of Tourism and Culture
Department of Culture – 27
J.L. Nehru Road, Kolkata – 700016.

... Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, MEMBER (J):

The O.A. No. 043/00295/2018 has been filed by the applicant seeking the following reliefs:

“8.1 To set aside and quash the impugned order dated 31.1.2013 as the respondents while proceeding to issue the impugned communication ignored the express directives passed by this Hon’ble Tribunal and proceeded to dispose of the claim of the applicants basing on issues which has already been settled by this Hon’ble Tribunal. As such the impugned communication having been so issued is in clear violation of the provisions of the Rules holding the field, directions as passed by this Hon’ble Tribunal and without there being any application of mind.

8.2 To grant all the benefit as granted to the other similarly situated employees which includes the benefit of temporary status and consequential regularization of his service with retrospective effect i.e. from the date on which such other similar employees as mentioned above have got the benefit, including seniority, arrear salary etc.

8.3 Cost of the application.

8.4 Pass any such order/orders as Your Lordships may deem fit and proper.”

2. Mrs. B. Devi, learned counsel appearing on behalf of the applicant submitted that applicant was initially appointed on 18.09.1992 in the post of Chowkidar on casual basis. He was in employment on the date of issue of DOPT OM dated 10.09.1993 and have rendered continuous service of one year for a period of more than 206 days. As such, he is entitled for the grant of temporary

status in terms of DOPT OM dated 10.09.1993 w.e.f. 01.09.1993. On earlier occasion, this Tribunal vide order dated 14.09.2011 in O.A. No. 174 of 2011 directed the applicant to make exhaustive representation before the respondent authority by providing all the necessary details. On receipt of such representation, respondents were required to test that representation on the touchstone of the decision of the Hon'ble Gauhati High Court dated 07.01.2009 in the case of **Naresh Sarkar & Ors. Vs. CAT & Ors., W.P. (C). NO. 6517/2005.**

According to the learned counsel, the case of **Naresh Sarkar** was adjudicated by the Hon'ble High Court on identical facts.

3. Learned counsel for the applicant has drawn our attention on the speaking order dated 19.12.2011. According to the learned counsel, despite specific direction, respondents did not take into consideration the decision of **Naresh Sarkar** and the claim was rejected on the ground that applicant did not continuously worked as casual worker w.e.f. 18.09.1992 to 10.09.1993 but engaged temporarily for a period of 89 days from 18.09.1992 to 15.12.1992 with gaps. Besides, name of the applicant was not sponsored by the local Employment Exchange.

4. Learned counsel for the applicant invited our attention to the order of this Tribunal dated 24.02.2004 passed in OA No. 103 of 2003. In the said order relying on the decision of the Hon'ble Apex

Court in **State of Haryana v. Pyara Singh, (1992) 3 SLJ 34 SCC** and upon hearing rival submissions, it was held that applicants, who had already worked on casual basis for more than ten years, are covered by the DOPT's scheme of 01.09.1993. Accordingly, this Tribunal vide the aforesaid order directed the respondents to consider the case of the applicants for regularization in the light of the notification and scheme promulgated by the Government. Pursuant to said directions, the respondents vide order dated 31.05.2004 rejected the case of the applicant and Naresh Sarkar and Sanjeet Kumar on similar grounds. Naresh Sarkar and Sanjeet Kumar assailed the said orders in O.A. No. 238 of 2004 which was dismissed by this Tribunal vide order dated 02.08.2005. Both of them assailed the order of this Tribunal before the Hon'ble Gauhati High Court in WP (C) No. 6517/2005 whereby the Hon'ble High Court nullified the aforesaid stand of the respondents. Hon'ble High Court took into consideration the categorical assertion of the petitioners that they had been in continuous service ever since from their initial engagements and the said assertion had not been denied by the respondents. It was also admitted that the services of the petitioners are still being utilized. DOPT scheme of 01.09.1993 is applicable to all those casual labourers employed by the Government of India on the date of issuance of those orders. Clause 4 of the scheme reads as under:-

"4. Temporary Status- (i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)."

According to the learned counsel, while setting aside the order of this Tribunal dated 02.05.2005, the Hon'ble High Court directed the respondents to regularize the services of Naresh Sarkar and Sanjeet Kumar. In compliance of order of the Hon'ble High Court, services of Naresh Sarkar and Sanjeet Kumar were regularized, whereas in the context of the present applicant, ratio of the said judgment was not applied despite specific direction in this regard by this Tribunal.

5. Learned counsel for the applicant further submitted that the service of another similarly situated person namely Sri Kulen Barman has been regularized in compliance of the judgment and order of the Hon'ble Gauhati High Court dated 10.05.2016 in WP(C) No. 146/2013. According to the learned counsel, the applicant has been continuing in service till date since 1992 and served more than 25 years. As such, applicant has legitimate right to be considered for regularization of his service in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Ors. Vs. Uma Devi and Ors. (2006) 4 SCC 1 at para 53, page 42** where Apex Court has held as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly appointed*, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

6. On query to the learned Addl. CGSC for the respondents Mr. R. Hazarika as to why the case of the applicant has not been regularized despite of the fact that the respondents have considered and regularized in the case of other similarly situated employees, learned Addl. CGSC submitted before the BAR that the present applicant has neither worked continuously nor worked for 240 days in a year as prescribed by the O.M. dated 01.09.1993.

7. We have heard the learned counsel for the parties, perused the pleadings and material placed on record. We have carefully gone through the judgments cited by the learned counsel for the applicant. From the perusal of the pleadings, it is found that the applicant has completed more than 25 years since 1992 and still continuing. It is also evident that similarly situated persons are enjoying on getting regularization of their services, however, the case of the applicant, who is aged about 48 years, has not been regularized till date.

8. We have also gone through the judgment and order dated 07.01.2009 passed by the Hon'ble Gauhati High Court in WP(C) No. 6517/2005 wherefrom it transpires that even if the applicant is not covered by the scheme 1993, but if he has worked for a long period, it would neither be consistent with the requirement of Article 14 of the Constitution nor the basic obligation of the State policy, to terminate the services. In the present case, applicant was joined in service prior to 01.09.1993 which is undisputed fact.

9. After taking into consideration the entire conspectus of the case, we hereby set aside the impugned order dated 31.01.2013 and direct the respondents to consider the case of regularization of services of the applicant in view of the ratio laid down by the

Hon'ble Apex Court in the case of **Uma Devi (supra)** within a period of four months from the date of receipt copy of this order.

10. With the above observation and direction, O.A. stands disposed of. No order as to the costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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