

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/00333/2017

Jabalpur, this Wednesday, the 13th day of February, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Rajiv Nayan Joshi, S/o Purshottam Joshi, Age : 41 years,
Occupation : Service, R/o Premium Park, Opposite Arbindo
Hospital, Indore – 452015 (M.P.) **-Applicant**

(By Advocate – Shri Prashant Upadhyay)

V e r s u s

1. Union of India through Secretary, Ministry of Micro Small and
Medium Enterprises, Nirman Bhawan, New Delhi – 110008.

2. The General Manager, Indo-German Tool Room, Sector E,
Sanwer Road, Industrial Area, Indore - 452015 **- Respondents**

(By Advocate – Shri Girish Patwardhan)

(Date of reserving order: 20.12.2018)

O R D E R

By Navin Tandon, AM.

The applicant is aggrieved that he has not been regularised from the date of his joining from the year 2007 with all consequential benefits.

2. The applicant has made the following submissions:

2.1 The respondents had issued an advertisement for appointment on contractual basis for which the applicant was

called for interview on 04.04.2007. After clearing the interview, he was offered a job as Trainee Engineer on 17.08.2007 (Annexure A-2) on contract basis.

2.2 His contract was extended on year to year basis till 31.12.2017 and his designation was also modified as Junior Engineer (contract basis) and Assistant Engineer (on contract).

3. The applicant has sought for the following reliefs:

“8. Reliefs Sought:

This Hon’ble Tribunal may graciously be pleased:

- (a) to call the relevant records of the case from the respondents;
- (b) to regularize the services of the present applicant in the Respondent No.2 organization from the date of joining i.e from the year 2007 with all consequential benefits and dues; and/or
- (bb) To grant the benefit of minimum pay scale of regular pay scale to the present applicant; and
- (c) to allow this application with costs;
- (d) to pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the applicant.”

4. The respondents have made the following submissions in their reply:

4.1 There is no post of Assistant Engineer in the regular set up of respondent No.2.

4.2 The appointment of the applicant was as per the need of the hour and not by following any recruitment rules. His

engagement was purely on contract basis as per the requirement.

4.3 The applicant attended the interview for the post of Senior Engineer, wherein his name was not recommended for the post (Annexure A filed with the reply).

4.4 The engagement of the applicant was purely on contract basis which he has duly accepted and worked with the respondents and not as per the procedures for regular appointment and, therefore, he could not have been given regular appointment.

4.5 During the pendency of this O.A, the contract of the applicant with the respondents ended on 31.12.2017, which has not been extended. He approached this Tribunal vide MA No.201/290/2018 for continuation of his contract. However, the same was considered and rejected vide order dated 15.03.2018.

5. We have heard the learned counsel for the parties and perused the pleadings available on record.

6. Learned counsel for the applicant submits that since the applicant has been working with the respondent organisation for more than 10 years, he is entitled to be considered for regularisation as per Para 43 of the judgment of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs. Umadevi (3)**, (2006) 4 SCC 1.

7. On the other hand, learned counsel for the respondents submitted that the applicant has already been discharged from service on completion of his contract on 31.12.2017. Therefore, this O.A has become infructuous. He cited the orders passed by this Tribunal in OA No.202/00325/2015 dated 20.03.2017.

8. On perusal of the record we find that the applicant had applied for the post of Sr. Engineer (on contract) in the year 2007. The screening committee after scrutinizing the qualification, experience, age limit etc. found 12 candidates suitable for interview. All the 12 candidates were called for interview on 4th April 2007. However, out of 12 candidates called, only six candidates, including the present applicant, appeared for interview on 4th April,2007. The selection committee recommended the name of one Rakesh Kumar Maindad as Engineer (not as Sr. Engineer) in the pay scale of Rs.5500-175-9000 at minimum of basic pay on contract basis.

9. As per the IGTR Recruitment Rules there are two separate posts of Sr. Engineer (in the pay scale of Rs.8000-13500) and Engineer (in the pay scale of Rs.5500-9000). Though the respondents had invited applications for the post of Sr. Engineer, they had finally selected a candidate on the lower post of Engineer

at the minimum of the basic pay of the pay scale of Rs.5500-9000 i.e at Rs.5500/-. Immediately after that selection, the applicant was offered the post of Trainee Engineer at Rs.5500/- vide order dated 17.08.2007 (Annexure A-2).

10. Thereafter, the applicant was continuously working under the respondents till he had filed this Original Application. The respondents in para 1 of their reply have stated that the “tenure was extended from time to time and lastly he was appointed as Trainee Engineer by order dt. 2.1.17 for the period 4.1.17 till 31.12.17 at a consolidated salary of Rs.15,000/- per month”. The applicant has filed this Original Application on 02.05.2017 for regularisation of his services from the date of his joining in the year 2007. Therefore, the contention of the applicant that his non-renewal of contract on 01.01.2018 seems to be a retaliatory action the part of the respondents can not be brushed aside.

11. There are 29 & 13 sanctioned posts of Engineer and Senior Engineer respectively under the respondents-organisation as per the Recruitment Rules filed by the respondents. The respondents have also failed to point out that during this interregnum period of 10 years, all the 29 and 13 vacancies of Engineer and Senior Engineer have been filled up. The applicant is working since 2007 after his

due selection, though on contract basis, and has become over-aged during this period.

12. The Hon'ble Supreme Court in the matters of **Umadevi** (supra) has held that the Courts should not issue directions for absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment.

13. In the matters of **State of Haryana Vs. Piara Singh**, (1992) 4 SCC 118 the Hon'ble Supreme Court has held that an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

13.1 This has been considered by the Constitution Bench in the case of **Umadevi** (supra) and has not been overruled.

14. However, in view of the fact that the applicant has already been discharged from service on completion of contract with the respondent organisation, this O.A has been rendered infructuous.

15. Accordingly, this Original Application is disposed of has

having rendered infructuous, with a direction to the respondents to consider the case of the applicant, as and when any need arises, and he be given preference over the new entrants for appointment against such post. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/rkv