

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.3385 of 2014

This the 11th day of December, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Valsamma B. Nair, 51 yrs, Stenographer Grade II
R/o 530D, Pocket A-3,
Mayur Vihar, Phase-III,
New Delhi, 110096.

....Applicant

(By Adv. : Shri Wills Mathews with Mr. Paul John Edison)

VERSUS

1. Union of India,
Ministry of Labour and Employment,
Through its Secretary,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. V.V. Giri National Labour Institute,
Through its Director General,
Sec 24, Noida-201301,
Uttar Pradesh

.....Respondents

(By Adv. : Shri R.K. Sharma)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

- a) Pass an order directing the Respondent No.2 to change the date of appointment of the petitioner from 28.11.2005 to 12.1.1996 in all their records.
- b) Pass an order/ directing the Respondent No.3 to provide all service benefits to the petitioner

including ACP as per 5th CPC and NPS with effect from 12.1.1996.

- c) Pass such other directions or orders as this Ld. Tribunal may deem fit and proper to meet the ends of justice and award the cost of the present Original Application.”

3. Since the applicant in this OA is seeking on the one hand change of her appointment from 28.11.2005 to 12.1.1996 and on the other hand seeking grant of ACP as per 5th CPC and NPS with effect from 12.1.1996, this Court was of the considered view that the reliefs sought are of multiple nature, which is not permissible as per the rules of this Tribunal in a single Original Application. When the aforesaid position apprised to the learned counsel for the applicant, he submitted that he confines the claim of the applicant to the extent of relief of clause a) only in this case and with regard to other relief, he seeks permission to take appropriate action in the matter.

4. In view of the above statement made by learned counsel for the applicant during the course of hearing, this Court permitted him to agitate the grievance of the applicant in this case to the extent of relief clause a) of para 8 of the OA as quoted above.

5. Brief relevant facts of the case are that the applicant was engaged in the respondent – Institute as Steno Typist on consolidated salary of Rs.2200/- p.m. under the Project on

National Resource Centre on Child Labour (NRCCL) w.e.f. 4.2.1992. She was later placed in the scale of Rs.1200-2040/- as Stenographer Grade-II under the Child Labour Survey Project w.e.f. 12.1.1996. Since her placement was under a project, her placement was temporary in nature. She was appointed as Stenographer Grade-II in the pay scale of Rs.4000-6000/- on regular basis w.e.f. 28.11.2005 vide order dated 30.11.2005.

5.1 The applicant stated that she made application form for allotment of Permanent Retirement Account Number on 19.1.2012 as the administration of the respondent no.2 erroneously entered the joining date as 28.11.2005 even after clear request from the applicant that her joining date is 12.1.1996. However, under duress she signed on the application.

5.2 Being aggrieved by non-acceding to her request, the applicant has filed this OA seeking the reliefs as quoted above.

6. During the course of hearing, learned counsel for the applicant submitted that since 4.2.1992 continuously on the post of Stenographer without any break in the service and when the applicant's service was regularized, it should have been from the date of appointment either from 4.2.1992 or 12.1.1996 and by any stretch of imagination not from

28.11.2005. Counsel for the applicant also placed reliance on the seniority list in which the applicant's initial date of appointment from 12.1.1996 has also been mentioned and the date of his regularization.

7. To the aforesaid submission, learned counsel for the respondents submitted that the appointment of the applicant from 4.2.1992 till 28.11.2005 was under project and the appointment in the project cannot be said to be appointment to any regular post but the same is only a temporary appointment coterminous with the project. So far mentioning of date as 12.1.1996 in the seniority list is related to the fact that applicant was in the service of respondents under the project and the applicant was regularised only vide order dated 30.11.2005 w.e.f. 28.11.2005. Counsel also strenuously argued that an employee working under a project has no right to claim regularization as the appointment under the project is not on any regular post but with relation to the project.

8. After hearing learned counsel for the parties, this Court also finds that the applicant's appointment from 4.2.1992 till 27.11.2005 was not against a permanent/regular post but was for a specified period under a project and the applicant's counsel is unable to point out any rule or law which permits that a specific period appointment against a project can be

said to be equated with regular appointment to a regular post. Since no rule or law on the issue involved in this case has been produced before this Court to show that the project appointment can be said to be against a regular post and hence, a continuous appointment be treated as regular appointment, we do not find merit in the claim of the applicant with regard to change of date of appointment from 28.11.2005 to a previous date of 12.1.1996.

9. In the case of ***Rajendra and others Vs. State of Rajasthan and others***, (1999) 2 SCC 317, where the termination of the employment had been caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds, the Hon'ble Apex Court held as under:-

"that when posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose."

Further in the case of ***Jaipal and others Vs. State of Haryana***, (1998) 3 SCC 354, where also the employees of the project of adult and non-formal education, a temporary

project, which was a time bound project to last till 1990, the Hon'ble Apex Court held that the appellants are not entitled for regularising of their services.

10. In the case of ***State of Himachal Pradesh v. Nodha Ram***, JT 1996 (1) SC 220, the Hon'ble Supreme court held that where a project is completed, and closed due to non-availability of funds, the employees have to go along with its closure. No vested right is created in temporary employments. Directions can not be given to regularise their services in the absence of any existing vacancies, nor can directions be given to the State to create posts in a non-existing establishment. In this case Supreme Court found that the directions issued by Court for regularisation were illegal warranting interference. In ***State of Himachal Pradesh through the Secretary Agriculture to the Govt. of Himachal Pradesh, Shimlalan Vs. Nodha Ram and others***, JT 1996 (1) SC 220, the Hon'ble Supreme Court has held as under:-

"It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our

interference. The order of the High Court is, therefore, set aside. (Para 4)"

11. In the result, for the foregoing reasons, the present OA being devoid of merit is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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