

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00142/2018

Dated Wednesday the 20th day of February Two Thousand Nineteen

CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)

1. A.Prakasam,
2. K.Krishnan,
3. M.Sigamani.

....Applicants

By Advocate M/s. R. Rajesh Kumar

Vs

- 1.Union of India,
rep by its Secretary,
Ministry of Defence (Production & Supply),
Government of India,
New Delhi.

- 2.The General Manager,
Enigne Factory Avadi (EFA),
Avadi, Chennai 600054.

- 3.The Chairman & DGOF,
Ordinance Factory Board,
10/A, S. K. Bose Road,
Kolkatta 700001.

- 4.The Principal Controller of Factories,
10A, Shaheed Khudiram Bose Road,
Calcutta 700001.

- 5.The Controller of Finance and Accounts,
Heavy Vehicles Factory,
Avadi, Chennai 600054.

....Respondents

By Advocate Mr. M.T. Arunan

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicants have filed this OA seeking the following relief :

"To set aside the impugned order bearing No. EFA/A/IE/014 dated 27.11.2017, 06.12.2017, 12.12.2017 and consequently direct the respondents to regularise the casual service rendered by the applicant from the date of initial appointment, prior to their regular appointment with all consequential benefits at par with the benefits granted in WP No. 2598 of 2010 and WP No. 19434/2009, High Court of Madras."

2. The grievance of the applicants is that they had made a representation dt. 24.11.2017 seeking regularisation of casual service in the same manner as the applicants in OA 705/2013 who were directed to be extended the benefits granted to the petitioners in the WPs No. 2598 of 2010 and 19434 of 2009 before the Hon'ble Madras High Court, if the applicants therein were similarly situated. It is submitted that the order was implemented and the casual service in respect of 72 members of the 1st applicant union therein were regularised. Since the applicants' names were not contained in the relevant list their request for regularisation of casual service could not be acceded to.

3. Learned counsel for applicants would submit that as the applicants were relying on the order passed in OA 705/2013 dt. 28.09.2016 which in turn relied on the order passed by the Hon'ble Madras High Court in the WPs No. 2598 of 2010 and 19434 of 2009 dt. 18.10.2011, the applicants were entitled to the same benefits. The mere fact that the applicants were not a party therein could not be held against them for rejection of their claim .

4. The respondents have filed a reply contesting the claim of the applicants,

relying on the observations of the Hon'ble Apex Court in ***Government of West Bengal Vs. Tarun K. Roy***, (1997) 3 SCC 395 wherein the legal principles in regard to extension of benefits to similarly placed persons had been enunciated on the following lines:-

“13.....

Why should the court come to the rescue of such person when they themselves are guilty of waiver and acquiescence? **The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:**

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matter more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situate person did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C.Sharma & Ors V. Union of India) (supra). ***On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that they petition does not suffer from either laches and delays or acquiescence.***”

5. I have considered the pleadings and submissions. It is not in dispute that the applicant claimed regularisation on par with the applicants in OA 705/2013 which was disposed of by this Tribunal by an order dt. 28.09.2016. Admittedly, the order was complied with and 72 members of the 1st applicant union therein were regularised. It is clear that the applicants' claim had been rejected only on the ground that they were not a party therein. It is also clear that the order in OA 705/2013 dt. 28.09.2016 had been passed relying on the order of the Hon'ble Madras High Court in WPs 2598/2010 & 19434/2009 dt. 18.10.2011 though even the applicants in the said OA were not party before the Hon'ble Madras High Court in the WPs concerned. Yet the direction by this Tribunal to ascertain if they were similarly placed and if so extend the benefit granted to the petitioners in the said writ petitions was complied with. In such circumstances, the order of the Hon'ble Madras High Court could not be treated as one that was passed *in personam*.

6. In the aforesaid view of the matter, the only issue that the respondents need to ascertain now is whether the applicants herein were also similarly placed and if so grant the same benefits. Clearly, Annexure A7 impugned orders dt. 27.11.2017, 06.12.2017 & 12.12.2017 are non-speaking as it has not been brought out how the respondents arrived at the conclusion that the relief granted in the aforesaid writ petitions and OA 705/2016 must be regarded as orders *in personam*. Accordingly, the impugned orders are set aside. The respondents are directed to extend similar benefits as extended to the applicants in OA 705/2013,

if the applicants herein are similarly placed within a period of two months from the date of receipt of a copy of this order.

7. OA is disposed of.

(R. Ramanujam)
Member(A)
20.02.2019

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