

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 343 of 2012

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jayati Chandra, Administrative Member

SUBAL CH. PRAMANICK

VS

UNION OF INDIA & ORS. (E. RLY.)

For the applicant : Mr.A.K.Banerjee, counsel
Mr.P.Sanyal, counsel
Mr.S.N.Chattopadhyay, counsel

For the respondents : Mr.A.K.Banerjee, counsel

Heard on : 5.2.2016 Order on : 11.3.16

O R D E R

Ms. Bidisha Banerjee, J.M.

Heard both the ld. Counsels.

2. The applicant in this OA is essentially claiming seniority, proforma fixation of pay as allowed to similarly circumstanced employees who were employed in the year 1988, in terms of a decision of the Hon'ble High Court at Calcutta in CR No. 3756 (W) of 1983 and order dated 3.8.04 passed by this Tribunal in OA 94/03.,

3. OA 94/03 was filed by the applicant seeking regularisation of service w.e.f. the date of his first posting in the year 1982 with all consequential benefits. Way back in 1985, Hon'ble High Court at Calcutta in CR No. 3756 (W)/83 issued a direction to the respondents vide its order dated 1.10.85, to consider the case of the applicant. Accordingly his case was examined and a list of names of casual employees was published. The present applicant, during the hearing of OA 94/03 claimed that his name found place against Sl. NO. 28 describing him as "Subal Pramanick", S/o Fakir Pramanick, Village & P.O. - Srikrishnanagar, District - 24 Parganas. The respondents' counsel had

disputed the position and had submitted that in one of the annexures the applicant was described as "Subal Chandra Pramanick", S/o Fakir Chand Pramanick, Village - Purbachak, Panchghara, P.O. - Srikrishnanagar. Therefore in view of the factual dispute in regard to identity of the applicant the OA was disposed of with the following direction :

"In this background the applicant has associated himself to be Subal Chandra Paramanick whereas the respondents stated that the person who has been enrolled as unapproved substitute was Subal Paramanick. We have no agency to verify the truth of such allegations and counter allegations advanced by both parties. In such a situation, we, therefore, direct the respondent No.4 to consider the applicant's prayer whether he is the same person who has been enlisted as a substitute in their live casual labour register as per Annexure A to the OA. In case, it is found that the applicant is the same person, who had been enlisted in the live casual register, the order of regularisation shall be given to him within three months from the date of communication of this order with all consequential benefits."

The OA was therefore disposed of on 3.8.04 with a direction to regularise within three months.

4. Due to the delay in implementation of the order the applicant took out Contempt Proceedings before this Tribunal vide CPC 111/05. It was noticed by the Bench on 15.2.05 that a speaking order was issued rejecting the claim of the applicant. The speaking order was however not challenged.

5. In the Contempt Application being 111/05 this Tribunal on 5.3.09 passed the following direction :

"When explanation is called for from the alleged contemnor she submitted that she has no inclination to defy the order of the Court but she is waiting for the report from the civil authority where from she can determine whether the person is one and the same. She submits that it will take some more time. The alleged contemnor is given two weeks time to comply with the orders of the Tribunal. The matter may be posted for order on 19.3.2009. By that time it is made clear that the order of the Tribunal should be complied with."

Therefore the time limit to comply with the directions issued on 3.8.04 was virtually extended on 5.3.09.

6. In the compliance report submitted by the respondents/alleged contemnors in the teeth of contempt proceedings, on 15.1.10 it was disclosed that the report of the concerned civil authority dated 15.6.09 was received by them on 24.6.09 and as per the said report the matter of impersonation as well

as possibility of a second claim was not conclusive. This Tribunal also perused a report sent by Dy. Superintendent of Police, DIB, South 24 Parganas, and passed the following order :

"Keeping all the above in view especially point 4 of the DSP's letter in view we are not in agreement with the conclusion drawn by the respondents that there is still some doubt about the identity of the applicant since all the points of the reference have been covered adequately. The respondents are therefore directed to issue orders to implement directions given in OA 94/03 dated 3.8.04 within four weeks of the date of issue of this order and report compliance."

Therefore a further compliance report was asked for on 26.4.10 but without any whisper whether the regularisation would relate back to the date when the order was passed in OA. It again amounted to extension of time to comply with the order passed in OA to a further period of 4 weeks from date of its issue.

7. In compliance thereof, on 26.8.10 (Annexure A/8) the applicant was re-engaged as substitute under SM/KRP in Operating Department on basic pay Rs.5740/- with GP Rs.1300/- in scale Rs.4440-7440/- after being found medically fit in Bee One (B-1).

Further on 26.8.11 the applicant was posted as R.R. Cook under SM/KRP with the pay of Rs.5740/- in the scale of Rs.4440-7440/- with Grade Pay of Rs.1300 after being found suitable in the screening test held on 10.6.11 and 13.6.11 and medically fit in B-I category, with an assurance of being regularised after due screening.

On 23.12.11 the applicant sought for regularisation from a back date which remained pending with the authorities when the present OA was filed.

8. In the reply the respondents submitted that the applicant worked for 12 days and having not attained temporary status to make him eligible to be subjected to the screening test for regularisation, he was posted only on 18.8.11 on being regularised after due process of screening.

9. In the rejoinder the applicant has averred that non-compliance of the direction of the Hon'ble High Court resulted in deprivation of being appointed in a Group 'D' post and his prolonged sufferings.

10. In view of the rival contentions and materials on record, the issue to be determined in the present OA is therefore whether the applicant would be entitled to be regularised from a back date with consequential benefits.

11. As noted *supra*, none of the orders passed by this Tribunal in the CPCs, ever mandated the applicant's regularisation from a back date. In fact the orders passed in the CPCs virtually extended the time for compliance of the order in OA, from time to time which the applicant never objected to. The applicant having never asked for regularisation from a back date, when the CPCs were disposed of could not ask for regularisation from a back date, *now*.

12. That apart his identity was all along in cloud. It was only after his identity emerged clear from all doubts i.e. on 15.6.09, the respondents re-engaged the applicant on 26.8.10 and regularised him in terms of Railway Board's circular No. 12/91. It was very unfortunate that the applicant had to wait for so long to get his service regularised, yet his delayed regularisation could not be helped.

13. As per the Railway rules a substitute, upon completion of four months continuous service would be treated as eligible for rights and privileges as of a temporary Railway employee and service of Substitute would count for pensionary benefits from the date of completion of four months if followed by absorption against a Group 'C' or 'D' post without break. The applicant is therefore apprehensive that his service would not make him eligible for pension whereas had he been engaged in 2004 in terms of the direction in OA 94/03, he would have earned pension and other service benefits.

14. Ld. Counsel for the applicant therefore would vociferously argue that the applicant deserved regularisation if not from 1982 then at least from the date of engagement as a Substitute to enable him to draw full pension due to completion of 10 years regular service. However, we fail to comprehend on what basis such submission was made, as even such computation would not allow him pension.

15. The date of birth of the applicant could be noted as 15.11.58 (Annexure A/2). He would thus attain the age of superannuation on 15.11.18 but

evidently he would not complete 10 years regular service as on such date even after computing his substitute service towards pension. The order passed in OA 94/03 however records that the applicant claimed to have rendered service from 1982 to 1989, which fact was not refuted by the respondents therein. Therefore admittedly he served from 1982 to 1989 under the Railways. His service from 2010 is also noticed. But his regular service would not entitle him for pension.

16. Nevertheless, the applicant is not remedy less. If he had rendered service from 1982-89 as recorded in the OA 94/03 order, half of such service if reckoned for pension in view of the Railway Rules would make good the shortfall in regular service reckonable for pension.

17. Therefore in the interest of justice and to give a quietus to the matter, we dispose of the OA with a direction upon the authorities to ascertain the period of casual service and treat this service as would be reckonable for pension i.e. either in full if he had served as a substitute or in part, if he served as a casual labour in addition to his regular pensionable service and after computing his substitute service in terms of Railway Rules, as and when the same would fall due.

18. We hope and trust that this order would ameliorate the grievance of the applicant and be able to placate and pacify him to a large extent.

19. Accordingly the OA would stand disposed of. No order as to costs.

(JAYATI CHANDRA)
MEMBER (A)

in

(BIDISHA BANERJEE)
MEMBER (J)