

Central Administrative Tribunal
Principal Bench, New Delhi.

(31)

RA-18/2005
MA-157/2005
OA-3071/2001

New Delhi this the 22nd day of August, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Jai Prakash,
S/o Sh. Harihar Mahto,
R/o H.No. 123A, Shanti Marg,
Gali No.2, Mandawali,
Fazalpur, Delhi-92.

..... Review Applicant

(through Sh. S.M. Garg, Advocate)

Versus

1. Union of India through
Director General,
Council of Scientific & Industrial
Research, New Delhi.

2. The Director,
National Physical Laboratory,
Pusa Road, New Delhi.

..... Respondents

(through Sh. Satish Kumar, Advocate)

Order (Oral)

Heard the learned counsel for the parties.

2. In the light of decision of the Apex Court in **Shanker K. Mandal & Ors.**

Vs. State of Bihar & Ors. (2003(2)SLJ SC 35) wherelh it was held that if the happenings in the Court have been wrongly recorded, the remedy is by way of review to call attention of the Court for clarification.

3. It is also trite law that a decision rendered per incuriam of a decision of the Apex Court in **K.G. Derasari & Anr. Vs. U.O.I. & Ors.** (2002 SCC (L&S) 756) constitutes a valid ground for review.

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4. On remand from the Hon'ble Delhi High Court, O.A-307/2001 was dismissed on 11.9.2003 by holding that for regularization of contract workers the Scheme promulgated by the respondents in 1990 having cut off date 1.1.1990 would not apply to the applicant and seniority is to be assigned as per the Scheme as on 1.1.1990.

5. Learned counsel for applicants in review contends that this Scheme of 1990 stood modified on a direction of the Apex Court in 5299-5300/1993 by an order passed on 10.8.1994 which culminated into modification of 1990 Scheme through absorption Scheme dated 6.12.1995. The conditions in Para-3, inter alia, provide inclusion of contract workers directly engaged by the CSIR.

6. In the above backdrop, it is stated that this fact was not brought to the knowledge of the Court though it was within the knowledge of the respondents.

7. On the other hand, learned counsel of the respondents strongly objects to the contentions and stated that what has been attempted is to re-argue the matter and as the Scheme of 1995 does not apply to contract workers, the same would not be applicable in the case of the applicant. It is also stated that there is no error apparent on the face of record as the applicant was not eligible under the Scheme of 1995 for regularization. He does not seem to be a contract worker as the applicant was not an employee of the sponsored project.

8. On careful consideration of the rival contentions of the parties, i find that the decision in OA has not taken cognizance of CA-5299/1993 which stood disposed of in 1994, where there is a categorical finding on record and the order passed by the Tribunal to the effect that those engaged prior to 6.12.1988 cut off date would not be insisted. In this view of the matter, a direction was issued to amend the Scheme which was complied with by the respondent on promulgation of the Scheme on 6.12.1995. The aforesaid Scheme prescribes applicability in Clause-3 not only to persons engaged and sponsored by the

CSIR but also to casual labourers which include contract workers, directly engaged by the CSIR. This is not disputed that the applicant falls in the same category. In this view of the matter, the decision is per incuriam of the directions of Apex Court and has not taken cognizance of Scheme 1995 which even after due diligence could be produced. In this view of the matter, RA is allowed. Order dated 11.9.2003 is recalled. Delay, if any, in filing the review application is condoned on justifiable grounds.

9. List the OA for hearing on 05.09.2005.

S. Raju
(Shanker Raju)
Member(J)

/vv/