

36

CENTRAL ADMINISTRATIVE TRIBUNAL , PRINCIPAL BENCH,  
NEW DELHI.

R.A.No.220/95

IN  
O.A.No.740/94

New Delhi : this the 28<sup>th</sup> MAY, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

1. The Union of India through  
the Secretary,  
Ministry of Communication,  
Department of Posts,  
Dak Bhavan,  
New Delhi - 110001.
2. The Chief Postmaster General,  
Delhi Circle,  
Maghdoot Bhavan,  
New Delhi - 110001.
3. The Senior Superintendent,  
New Delhi Sorting Division,  
Meghdoot Bhavan,  
New Delhi - 110001 .....,Applicants

By Advocate Shri M.K.GUPTA.

Versus

Shri Nathu Ram,  
s/o Sh.Nihal Singh,  
retired Head Mailman of New Delhi,  
Sorting Division,  
New Delhi.  
R/o Village & Post Office Badli,  
Delhi - 110042 .....,Respondent

By Advocate Shri Sant Lal.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

This is a review application bearing No.220/95  
filed by the UOI on 3.8.95 praying for review of  
judgment dated 2.12.94 in O.A.No.740/94 Shri Nathu Ram  
Vs. UOI & others.

2. M.A.No.2095/95 was filed praying for condonation  
of delay , and after hearing both parties on this

h

37

prayer, the M.A. was allowed and the delay was condoned.

3. In O.A.No. 740/94 the applicant Shri Nathu Ram, retired Mailman Sorting Division had impugned the orders dated 17.12.92 and 5.8.93 and had prayed for a direction to the respondents to treat him as having retired on 31.5.93 on attaining the age of 60 years under FR 56(A) after having been granted promotion to the next higher scale of 950-1400 under the Biennial Cadre Review (BCR) Scheme w.e.f. 1.10.91 vide Memo dated 5.3.92 with consequential benefits. His case was that he joined service in Group D cadre of RMS in Delhi Circle w.e.f. 8.10.56. The postal department introduced a BCR Scheme for promotion/placement to the next higher grade/scale of pay on completion of 26 years of service vide Memo dated 11.10.91, which was made effective from 1.10.91, and he was promoted to the next higher grade of Rs. 950-1400 under the Scheme w.e.f. 1.10.91 vide order dated 5.3.92, after having opted for the scheme. Subsequently by Memo dated 17.12.92 the respondents ordered the applicant's retirement w.e.f. 21.12.92, which was subsequently modified by Memo dated 5.8.93 by which he was treated as retired retrospectively from service w.e.f. 31.5.91 and the period from 1.6.91 to 21.12.91 was treated as re-employment. His contention was that under FR 56(a) and relevant SRs, Group 'D' employees superannuated at the age of 60 years, while employees of other grades superannuated

✓

38

at 58 years. The BCR Scheme did not supersede the provisions of the FRs/SRs, and did not envisage any change in the duties and responsibilities upon the official being placed in the next higher scale of pay. He contended that although he was entitled to be retained in service upto 31.5.93, under FR 56(a), he was illegally retired first on 21.12.92, and then retrospectively w.e.f. 31.5.93 upon attaining the age of 58 years, even before the introduction of the BCR Scheme, and without giving him the benefit of that scheme which accrued only from 1.10.91, and the period 1.6.91 to 21.12.92 was treated as re-employment, without his even having asked for the same.

4. The respondents contested the OA and pointed out that consequent to the introduction of the BCR Scheme, for which the applicant opted, he was placed in the scale of Rs. 950-1400 which fell in Group C for whom the superannuation age was 58 years. Hence he had to be retired on his having attained the age of 58 years on 31.5.93, and the further period 1.6.91 to 21.12.92 during which he continued to be in service, could only be treated as a period of employment.

5. After hearing both parties, the Tribunal had noted in its judgment dated 2.12.94 that as the BCR Scheme itself came into effect from 1.10.91 the question of giving an option to the applicant when he attained 58 years of age on 31.5.91 whether he would like to opt for the scheme or not.

h

39

did not arise. Hence to have initially retired the applicant on 21.12.92, and thereafter to modify that order by retiring him retrospectively w.e.f. 31.5.91 and to treat the period from 1.6.91 to 21.12.92 as re-employment, without the applicant even having asked for re-employment and without giving him an opportunity to show cause was to visit civil consequences upon him without giving him an opportunity of being heard, which we felt was arbitrary and violative of Articles 14 and 16 of the Constitution.

Accordingly the <sup>Tribunal</sup> had allowed the OA, quashed the impugned orders dated 17.12.92 and 5.8.93 and directed the respondents to treat the applicant as having retired from service upon completing 60 years age w.e.f. 31.5.93, with period from 21.12.93 to 31.5.93 as period spent in service, and to refix his pension and other retiral benefits accordingly.

6. In the RA two grounds have been urged. Firstly it is contended that DPAR's Notification dated 30.6.87 issued under Rule 6 CCS(CCA) Rules, 1965 was not considered by the Tribunal when it delivered the impugned judgment dated 2.12.94. By this notification, all Civil Posts under the Union would subject to such exceptions as Govt. may make by general or special order be classified as under.

Sl.No.	Description of Posts	Classification of Posts.
--------	----------------------	--------------------------

1	2	3
1.	A Central civil post carrying a pay or a scale of pay with a maximum of not less than Rs. 4000/-.	Group 'A'

h

40

2. A Central Civil Post carrying a pay or a scale of pay with a maximum of not less than Rs.2900/-but less than Rs.4000/-. Group 'B'
3. A ..... with a maximum of over Rs.1150/- but less than Rs.2900/- Group 'C'
4. A ..... the maximum of which is Rs.1150/- or less Group 'D'

---

A note to that notification clarified that 'Pay' had the same meaning as assigned to it under FR 9(21)(a)(1) and pay or scale of pay of a post means the pay or scale of pay prescribed under the CCS (Revised Pay) Rules, 1986 as amended by the CCS (Revised Pay) Amendment Rules.

7. Secondly, it has been contended that the impugned judgment goes against the Hon'ble Supreme Court's ruling dated 27.1.95 in State of Orissa & others Vs. A.C. Mohanty JT 1995 SC 6 which could not be brought to the Tribunal's notice at the relevant time. Hence it is urged that there has been an error apparent on the face of the record.

8. In the reply to the RA, the review respondent has pointed out that the change was only one of pay scale and not one of grade and that the applicant continued on the same post of Mailman with no change of duties and responsibilities

A

41

and hence the notification dated 30.6.87 would have an application in the facts and circumstances of the present case.

9. On the second ground, the reply states that the judgment in A.C. Mohanty's case (Supra) is dated 27.1.95 while the impugned judgment is dated 2.12.94 and hence that judgment cannot ever be considered for the purposes of review.

10. During hearing of the R.A. it was pointed out to the applicant's counsel Shri M.K. Gupta that the reason why the Tribunal had not noticed the Notification dated 30.6.87 was perhaps because it had not been placed before the Tribunal when the OA was heard. Shri Gupta however argued that in para 4 of the judgment, the Tribunal had itself noticed the UOI's argument that having been placed in the scale of Rs. 950-1400 which fell in Group 'C' the applicant would superannuate at 58 years of age, and under the circumstances, even if the relevant notification dated 30.6.87 was not produced in support of the proposition that those in the scale of Rs. 950-1400/- fell in Group 'C' and hence were to retire at 58 years, that did not alter the position materially, and an error had been committed which was apparent on the face of the record. There is considerable force in this argument. It is clear from a plain reading of the notification that as soon as a Central Civil post carries a pay or a scale of pay with a

^

42

maximum of over Rs.1150/- but less than Rs.2900/- it becomes a Group 'C' post and such grading is irrespective of whether the duties and responsibilities attached to the post have been changed or not. It is true that in the order dated 11.10.91 giving effect to the BCR Scheme and referred to the impugned judgment, a table has been provided which shows posts continuing in Group 'D' even after they had been placed in the revised pay scale of Rs.950-1400 upon implementation of BCR, but as between the order dated 11.10.91 and the notification that would prevail, which is applicable to all Civil posts under the Union of India which was issued under Rule 6 CCS (CCA) Rules, 1965 which squarely covers the applicant. Hence it must be held that there has been an error apparent on the face of record.

11. In view of above, we do not consider it necessary to go into the other grounds raised by the review applicants (UOI).

12. Under Section 22(3)(f) AT Act read with Order 47 Rule 1 CPC, an order/decision/judgment of the Tribunal can be reviewed only

- (i) On account of some mistake or error apparent on the face of the record;
- (ii) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the person seeking review and could not be produced by him at the time the order was made; and
- (iii) for any other sufficient reason.

43

13. From what has been stated above, it is clear that item (i) above in Order 47 Rule 1 CEC is fully attracted in this case.

14. Accordingly the prayer in R.A. 220/95 for recall of the impugned order dated 2.12.94 is allowed, to the extent that the said order is recalled and OA No. 740/94 is ordered to be posted for further hearing before an appropriate Bench on 8.7.96.

A. Vedavalli

( DR. A. VEDAVALLI )  
MEMBER (J)

S. R. Adige

( S. R. ADIGE )  
MEMBER (A).

/ug/