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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

NEW DELHI. New Delhi: 4th MAY, 1998.

1. R.A.No.47/97

IN

O.A.No.2316/95.

Udaipal Singh Senger & Ors Applicants.

Versus

Union of India & Ors Respondents.

2. R.A.No.51/97

IN

O.A.No.2343/95

Chander Prakash & Ors Applicants

Versus

UNION of India & Ors. Respondents.

3. R.A.No.52/97

IN

O.A.No.1845/95

Dhananjaya Jha & Ors Applicants

Versus

Union of India & Ors. Respondents.

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

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

ORDER

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

We have heard both sides in RAs No.47/97, 51/97 and 52/97 seeking review of common judgment dated 23.12.96 disposing of OAs No.2316/95, 2343/95 and 1845/95, and these 3 RAs are being disposed of by the common order.

2. In all those OAs, applicants who were

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Postal Assistants were aggrieved by the non-extension to them of the benefits of the CAT Jabalpur Bench judgment dated 16.12.86 in TA No.82/86 All India Postal Employees Class II Union Vs. UOI & Ors.

3. In T.A.No.82/86 filed by first petitioner G.S. Aslwal & ors in a representative capacity as Circle Secretary, All India Postal Employees Union Class III representing Reserved Trained Pool (RTP) in post offices, regularisation of all RTP employees was sought in posts of Postal Assistants with other facilities granted to Postal Assistants on ground of similar duties and responsibilities, work load etc. The Tribunal in its aforesaid judgment dated 16.12.86 noted that as per Respondents' Circular dated 31.10.80 a standing pool of trained reserved candidates for post of RMS Offices had been constituted for utilising their services as Short Duty Staff to minimise staff shortage. They were expected to work for 8 hrs. daily on hourly rates of wages after their initial training, but were not employed like regular employees in Post Offices and RMS Offices. These RTP employees were also not entitled to leave, transfer or promotion which was admissible to regular Postal Assistants but would be entitled to absorption against regular vacancies (subject to availability) on the basis of their seniority.

4. In its aforesaid judgment the Tribunal noted that admittedly the RTP personnel and regular postal Assistants were performing one and

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the same job, but while the RTP personnel were being paid wages on hourly basis and enjoyed none of the benefits mentioned in para 3 above, the regular Postal Assistants besides being entitled to a regular salary scale were also eligible for all the benefits of regular Govt. employees including those mentioned in para 3 above. Holding that this amounted to violation of Articles 14 and 16 of the Constitution, the Tribunal in its aforesaid judgment dated 16.12.86 allowed the OA and inter alia struck down the operation of the Circular dated 31.10.80 in regard to recruitment of fresh persons to RTP other than the petitioners; directed Respondents to absorb those applicants against regular posts in a phased manner, if necessary even by creating supernumerary posts, and further directed respondents that RTP employees performing the same duties as Postal Assistants should be paid the same salary and emoluments per mensem as were being paid to Postal Assistants with effect from the date of their appointment.

5. SLP No.11513/87 filed against that judgment was dismissed by the Hon'ble Supreme Court on 11.5.88 and later the benefits of the judgment dated 16.12.86 were ordered to be extended to the applicants in OA No.1345/92 Daya Chand & Ors. Vs. UOI by the CAT PB judgment dated 14.12.92.

6. Admittedly the 3 OAs covered by the

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impugned judgment dated 23.12.96 in respect of which review is sought were all filed in 1995, that is nearly 15 years after the issue of the Circular dated 31.10.80 creating the Reserve Trained Pool and nearly 9 years after the Tribunal's judgment dated 16.12.86. Accordingly in our judgment dated 23.12.96, while holding that the applicants in the aforementioned 3 OAs could not be denied the benefits of the CAT Jabalpur Bench's judgment dated 16.12.86, in view of the delay in approaching the Tribunal we made it clear that the extension of the benefits to the applicants in the OAs before us would be with effect from the date of the judgment and they would not be entitled to arrears. In this connection, we also noted that applicants in OA No. 2316/95 had asserted that respondents' letter dated 1.8.94 gave them a fresh cause of action, but in our view this assertion was incorrect and their cause of action actually arose from the date they commenced discharging the duties of RTP on daily wages rates which from the materials available on record was prior to 31.12.89, although these OAs were themselves filed in 1995. In that judgment we also noted that neither in the CAT Jabalpur Bench judgment dated 16.12.86 nor indeed in the CAT PB judgment dated 14.12.92 in Daya Chand's case (Supra) was there any direction for payment of arrears.

7. In RA No.47/97 the grounds taken are that firstly the CAT Jabalpur Bench in its judgment dated 16.12.86 had directed that RTP employees shall

be paid the same salary and emoluments per mensem as were being received by Postal Assistants with effect from the date of their appointment; secondly that the CAT Chandigarh Bench in its judgment dated 29.1.93 in OA No.709/PB/1990 and 710/PB/90 (to which one of us, namely Shri S.R. Adigo) was a party had directed payment of arrears of pay and allowances to those applicants and thirdly that the judgment in Daya Chand's case (supra) was implemented fully by respondents only as recently as September, 1995 by which similarly situated employees in the same postal circle were paid arrears.

8. A similar set of pleas has been taken in RA No.51/97.

9. In RA No.52/97 it has been inter alia urged that extending the benefits of the CAT Jabalpur Bench's judgment dated 16.12.86 in TA No.82/86 to the applicants but restricting it to be effective from the date of the impugned judgment (dated 23.12.96) as contradictory because on the one hand the objection of limitation has been ruled out, but the reliefs have been rejected on the grounds of delay. It has also been stressed that the judgment dated 16.12.86 had directed payment of salary and emoluments per mensem to RTPs as were being received by Postal Assistants from the date of their appointment (which included arrears) and these directions were implemented in full only to RTPs in MP Circle as recently as 2.5.90 while the CAT PB judgment dated 14.12.92 was implemented in full in March, 94 after full

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payment of arrears.. Various rulings have been cited in support of their grounds.

10. We have given the matter our careful consideration.

11. Under section 22(3)(f) AT Act read with Order 47 Rule 1 CPC a decision/order/judgment of the Tribunal can be reviewed only

- (i) On account of some mistake or error apparent on the face of record; or
- (ii) On the discovery of new and important material which after the exercise of due diligence was not within the knowledge of the parties or could not be produced by the parties at the time the order was made; or
- (iii) for any other sufficient reason, which has been construed to mean analogous reasons.

12. In the present case, the decision holding that the applicants would not be entitled to arrears, and to confine the benefits to be effective from the date of the judgment, was a deliberate and conscious decision taken after due application of mind and cannot be termed as 'mistake' or 'error', much less one which is apparent on the face of the record. This decision was taken consciously because of ^{the} great delay exhibited by the applicants in the three OAs in approaching the Tribunal. The impugned Circular was dated 31.10.80. The applicants in the 3 OAs approached the Tribunal in the year 1995, i.e.

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nearly 15 years after the issue of that impugned Circular and nearly 9 years after the CAT Jabalpur Bench judgment dated 16.12.86 in T.A.No.82/86, and another approx. 3 years after the filing of O.A. No.1345/92. Non restriction of benefits from the date of judgment would mean that persons could approach the Tribunal at any time for redressal of their grievances. Court/Tribunals while deciding cases are fully empowered to indicate the date from which any benefits flowing from its decision will take effect, and a decision to confine the benefits to be effective from the date of judgment was because the Tribunal was cognizant of the delay with which the applicants had approached it. In this connection, in A.T.Sharma Vs. A.P.Sharma & Ors. AIR 1979 SC 1047, the Hon'ble Supreme Court has held that the power of review may be exercised for the reasons outlined above but not on the ground that the decision was erroneous on merits as that would be the province of a Court of appeal. Again in Chandra Kanta & Anr. Vs. Sheik Habib AIR 1975 SC 1500, the same principles have been reiterated, and in Thungabhadra Industries Ltd. Vs. The Govt. of A.P. AIR 1964 SC 1372, the Hon'ble Supreme Court have held that "a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

In the present case, manifestly the decision to confine the benefits to be effective from the date of judgment was a deliberate and conscious one, was taken consciously and after due application of mind. The foregoing decisions of the Hon'ble Supreme Court would bar any review of the judgment

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under section 22(3)(f) A.T. Act, read with O.47 R.12 not all.

13. That is / In Union of India & Anr. Vs. K.N. Sivasankar & Ors. JT 1997(7) SC 202 attention to which was drawn by Respondents' counsel Shri Sudan, the Hon'ble Supreme Court had occasion to compare the service conditions of members of RTPs with those of casual labourers. Setting aside the impugned judgments of various Benches of CAT whereby the respondents had been directed that temporary status and other benefits made available to casual labourers should also be extended to the members of RTPs, the Hon'ble Supreme Court in its aforesaid judgment held as follows:

"The position of RTPs is quite different. In the first place, the very scheme which constituted RTPs provided for their absorption as regular employees. With this in mind, they were also given the same training as regular employees. They were required in the meantime, to carry out short-term duties or to handle peak hour traffic on an hourly wage basis. However, there was clear assurance in the scheme that they would be accommodated in future vacancies as regular employees in the manner set out in the scheme. We are informed that there was a backlog in absorption because of a ban on recruitment during certain years. All the RTP employees have been absorbed as regular employees by 1990. Some of the respondents who are before us have been absorbed much earlier, in the year 1988. Therefore, they are in a much better position than casual labourers and are now enjoying all the benefits of regular employment. Their claim relates to the period prior to their absorption. The entire period in effect, is either prior to 1988, or in the case of some of the respondents, prior to January, 1990. The benefits which they claim are the benefits which have been conferred on casual labourers only after 29.11.89.

The Tribunal, in our view, has erred in equating RTPs with casual labourers. The position of these two categories of employees is very different as we have already set out. The Tribunal has also erred in assuming that casual labourers are getting these benefits during the period for which the

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RTPs are claiming these benefits. RTPs have already obtained the benefit of absorption in regular service because of their own scheme. They, therefore, cannot, on the one hand, avail of their own special scheme and at the same time, claim additional benefits on the basis of what has been given to the casual labourers. This is unwarranted, especially as the period for which they claim these benefits is the period during which such benefits were not available to casual labourers."

14. It is true that the aforesaid judgment was in the context of the service conditions of RTPs as compared to those of casual labourers, but the ratio of that decision clearly is that RTPs were beneficiaries of their own special scheme, of which one of the benefits was regular absorption, and having been absorbed on regular basis RTPs could not claim the additional benefits available to those covered by another scheme for the period prior to their absorption. This judgment of the Hon'ble Supreme Court is as recent as of 1.8.97 and would also squarely hit the claims of the applicants for grant of arrears.

25. These 3 RAs are therefore rejected.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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