

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1274/2000

New Delhi this the 7th day of November, 2001

Hon'ble Mr. Shanker Raju, Member (J)

Smt. Suresh Bala
Wife of Shri Rajpal Singh
R/o H.No. WZ-144, Dashghera,
Todapur, Delhi-012.

(By Advocate: Shri Yogesh Sharma) -Applicant

Versus

1. Union of India through the Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. The Chief Engineer (NDZ)-II,
CPWD, Nirman Bhawan,
New Delhi.

-Respondents

(By Advocate: Shri Rajeev Bansal)

ORDER (Oral)

By Hon'ble Shri Shanker Raju, Member (J)

This application has been filed by the widow of a Muster Roll employee who has been accorded regularisation on 14.12.92. Applicant has approached this Tribunal earlier for accord of compassionate appointment and the relief has been turned down and further directions have been issued to the applicant to make a representation and also directions to the respondents to state reasons for having not accorded status of regularisation to the employee after 1969 and to pass a detailed and speaking order. Subsequently by filing an MA, this court had granted liberty to the applicant to assail the question of compassionate appointment on the ground of discrimination in pursuance thereof the Tribunal's

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order, respondents by an order dated 6.7.96 has rejected the claim of the applicant for compassionate appointment taking number of reasons for the same. The applicant, in this OA, has assailed retrospective regularisation and further accord of retiral benefits like, pension, gratuity, compassionate appointment etc.

2. Briefly stated, the applicant was subjected to a medical examination and police verification for the purposes of regularisation and these formalities have been completed way back in 1989. The vacancy was also available with the respondents since 1989. The respondents took four years to pass the orders of regularisation on 14.12.92 whereas the applicant in the interegnum died on 14.7.90. The order passed in pursuance of the directions of this court, it is stated that as the applicant died on 14.7.90, there was no way to comply with the appointment letter dated 14.12.92 and it is further stated that the applicant has not been discriminated and the persons who have been given the same benefit are not similarly circumstance. The request of the applicant for compassionate appointment was turned down on the ground that it has to be given for regular employee and not the muster roll employee and as the applicant had not joined in pursuance of regularisation of 14.12.92, he was not entitled for the benefit.

3. Learned counsel of the applicant by referring to the reasons accorded by the respondents to the

delay for regularising him whereas the formalities have been completed in 1989 contended that the reasons are absolutely unjustifiable and not relevant. It is also stated that in similar circumstance one Mr. N. Raman who was a regular Beldar and whose services were regularised w.e.f. 2.12.92 wheras he died on 19.8.92. It is stated that in that case the incumbent was posthumously regularised and the widow has been accorded all the retiral benefits as the applicant is identically situated, he cannot be subjected to hostile discrimination which is bad in law as per Article 14 & 16 of of the Constitution of India. Learned counsel of the applicant further placed reliance on several decisions of this court as well as the High Court of Punjab and Rajasthan to contend that in similar circumstance, the Tribunal has ordered posthumous regularisation of the deceased employee with a view to grant them the retiral benefits. The learned counsel of the applicant more particularly has placed reliance on the decision of the Corordinate Bench of this Court in Nirdosh Kumari Vs. Govt. of NCT of Delhi 2001 (2) ATJ 445 wherein applicant who died in harness on 7.6.93 and was accorded regularisation w.e.f. 1989 when he was accorded to the similarly circumstance situated casual labourers and was accorded all the benefits and death gratuity etc. As regards the res-judicata, it is stated that the applicant was given liberty to make a representation and he has filed the same which was rejected by the respondents. The relief which he

now claimed had not been finally adjudicated by the earlier court and no conclusive findings for the same has been recorded. As regards limitation is concerned, it is contended that the applicant has filed a representation for accord of family pension and other retiral benefits which has still to be decided. As the matter pertains to pensionary benefits and pay & allowances, he has placed reliance on the decision of M.R.Gupta Vs. Union of India 1995 (5) SCALE 29 to contend that accord of pay allowances is a continuous cause of action.

5. On the other hand, strongly rebutting the contentions of the learned counsel of the applicant, Shri Bansal, learned counsel for respondents stated that the OA is barred by principles of contructive res-judicata. Having failed to take the plea and redressal with regard to the regularisation posthumously having liberty with the applicant in earlier OA, the plea would not be allowed to be raised in the present OA. It is also stated that relief regarding compassionate appointment has already been denied as such applicant cannot be allowed to raise the same. Learned counsel of the respondents has also raised the ground of limitation contending that the applicant has not come within one year from the date the order has been passed and the issue in question is not continuous. Learned counsel of the respondents has stated that the order for regularisation has not been passed. The same is to be issued by SE Electrical Co-ordination circle and

there were thousand of Muster roll employees whose services were to be regularised by the time consuming process. The delay was only procedural and not at all intentional.

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6. Having regard to the rival contention of the parties and on perusal of the material on record, I am of the considered view that applicant has valid claim for accord of retiral benefits. The objections raised by the learned counsel of the respondents as to the constructive res-judicata has no application in the facts and circumstances of the present case. The applicant has raised the plea of her deceased husband not being regularised in time. The court has directed the applicant to make a representation and the reasons for delay for regularisation, the respondents having decided the same, the applicant has approached this court, which cannot be observed that the applicant has not taken the plea in the previous OA. Once the liberty is accorded to the applicant, he has a valid cause of action which he is claiming in the present OA as the applicant has not approached for compassionate appointment. In my considered view, the OA is not barred by the doctrine of res-judicata and cosnstructive res-judicata. As regards the limitation is concerned, the pay and allowances constitutes a continuous cause of action and more particularly when the issue is of pensionary benefits which accrues on every first day of the month. The limitation have no application in the present case and I hold that the case of the

applicant is within the limitation.

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7. As on merits, the Apex Court in the case of D. Sojah Vs. State of Kerela AIR 1999 SC 1529 has held that delay or inaction on the part of the Government in notifying against a vacancy cannot deprive the seniority of the petitioner. The applicant admittedly was subjected to all the formalities and having completed the same in 1989 has no role to play in his regularisation. The respondents have inordinately delayed the regularisation of the applicant which has been done on 14.12.92. The reasons accorded by the respondents that there were thousands Muster Roll employees and the orders have to be passed by SE Electricals would not absolve them from their inaction for four years to issue the orders for regularisation. In my considered view, the applicant having completed all the formalities in 1989 and admittedly there was an available vacancy and juniors the applicant have been regularised in 1989, has been arbitrarily discriminated. As regards the posthumous regularisation is concerned, I am fortified by the decision of the court in Nirdosh Kumari (Supra) as well as K. Pattamal Vs. Union of India (Vol.26) ATC 290 and held that ratio would mutatis mutandis applies to the case of the applicant also. The deceased Government servant is to be regularised posthumously w.e.f. 1989 when he completed all the formalities. The action of the respondents by regularising him from 14.12.92 cannot be countenanced.

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and is not legally sustainable. The claim of the applicant also succeeds on the ground of discrimination as one N. Raman who was also a regular Beldar and died in August 1992 has been regularised posthumously on 2.12.92 and the legal heirs of the deceased have been accorded all the pensionary benefits. As the applicant is also similarly circumstance, he cannot be treated differently. The action of the respondents by not according retiral benefits to the applicant by posthumously regularising his service is clearly barred by principles of equality enshrined under Article 14 & 16 of the Constitution of India.

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8. In the result and having regard to the reasons recorded above, the OA is allowed. The respondents are directed to accord regularisation to the deceased posthumously w.e.f. 1989 and thereafter to accord all the retiral benefits to his legal heir i.e. applicant in present OA in accordance with law. However, in the circumstances, I do not award any interest. The aforesaid exercise shall be completed by the respondents within three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

cc.