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CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH

ALLAHABAD

Dated: This the 7 day of January, 1997

Coram : Hon'ble Mr. S. Das Gupta AM
Hon'ble Mr. T. L. Verma JM

REVIEW APPLICATION NO. 5 OF 1996

IN

ORIGINAL APPLICATION NO. 115 OF 1994

Umer Ahmad Abbasi - - - - - Applicant

VERSUS

Union of India & others- - - - - Respondents

ORDER

By Hon'ble Mr. S. Das Gupta AM

This application has been filed, seeking review of judgment and order dated 11-12-1995 by which C. A. No. 115/94 was disposed of with certain directions.

2. In the aforesaid C.A., the applicant, who had been working as Contingency paid watchman since 17.7.1976 at Allahabad Kuchehry Post Office, sought a direction to the respondents to regularise his services w.e.f. 17.7.1976 as a group 'D' employee in the regular establishment with consequential benefits. After considering the rival pleadings, it was held that since the applicant had already been granted temporary status retrospectively pursuant to the scheme formulated by the department of Post for regularisation of the casual employees, he was

entitled to be regularised in his own turn depend on his seniority amongst those cpc/casual workers, who have already been granted temporary status.

2. In the Review application it has been submitted that the Tribunal should have ordered regularisation of the applicant's services ~~per se~~ without a condition that he will be entitled to regularisation if his junior is regularised in service. It has been pointed out that even after 17 years of service, the applicant's turn has not yet come and infact neither his seniors nor his juniors are being regularised in service. It has been further averred that the category of the applicant i.e. contingency paid employees is being totally ignored by the respondents and that the respondents are considering only Extra departmental Agents, ignoring other ^{Viz CP/Workers} casual [✓] A number of decisions of the Hon'ble Supreme court have also been cited.

4. In the judgment sought to be reviewed, it was noted that the applicant was granted temporary status in pursuance of the scheme, which had already been formulated by the department for regularisation of casual employees and therefore, the applicant must wait his turn for regularisation. It was in the supp. rejoinder affidavit that it was mentioned that only the Extra departmental Agents were being considered for regularisation against regular group 'D' post ignoring the claim of other categories. No details as to who are such E.D.As, who were given preferential treatments were given in the supplementary rejoinder affidavit. In any case, since such averments were not specifically made in the O. A., the respondents did

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not get an opportunity to controvert such allegation. To the rejoinder affidavit, a copy of the letter dated 17.5.1989 issued by the Assistant Director General (SPE) was also annexed. In this letter, order of priority amongst various categories for appointment to regular group 'D' posts has been indicated. E. D. As of the same division have been indicated at priority no. 2. It is true that amongst various categories, no quota has been indicated. It is now being argued in the Review application that in absence of any quota for various categories, the scheme formulated by the department is unreasonable. However, this scheme was not impugned in the O. A. and there is no relief for setting aside the same. In other words, what is being sought is ~~the~~ a relief, which did not form a part of the relief Clause in the O.A.

5. It is settled law that a judgment and order already passed can be reviewed only if it is shown to be suffering from any error apparent on the face of record or if any new fact is brought out, which warrants a review of the order already passed, provided such fact could not even brought out despite exercising due diligence.

6. We have carefully perused the pleadings on record. We do not find any error apparent in the impugned judgment and order on the face of record. Also no new fact has been brought out, which would warrant review of the order already passed.

7. We, therefore, ^{find} no merit in the review application and the same is accordingly dismissed.

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ALLAHABAD

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH ALLAHABAD

Allahabad : Dated this 11th day of December 1995
Original Application No.115 of 1994

District : Allahabad

QUORUM :-

Hon'ble Mr. S. Das Gupta, A.M.
Hon'ble Mr. T.L. Verma, J.M.

Umar Ahmad Abbasi son of Shri Mohd. Junaid Abbasi,
Resident of 148, Pura Manohar Das,
Allahabad.

(By Shri KE Srivastava, Advocate)

..... Applicant

Versus

1. Union of India, through the
Secretary (Postal), Ministry of
Communication, Government of India,
New Delhi.
2. The Sr. Supdt. of Post Offices,
Allahabad Division, Allahabad.
3. The Postmaster, Allahabad Kutchery,
Head Post Offices, Allahabad.

(By Sri SC Tripathi, Advocate)

..... Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

The applicant has been working as contingency
paid watchman since 17-7-1976 at Allahabad Kutchery
Post Office. He was being paid allowances as fixed
by the Department from time to time for performing
8 hours duties. However, pursuant to a decision of
the Hon'ble Supreme Court in a case filed by P&T

Sri K.P. Srivastava, Adv., C/A

Allahabad Bench, Allahabad

[Signature]

employees, the applicant was getting salary at the minimum of the regular scale of pay together with allowances. The applicant had repeatedly applied to the respondents for being permitted to appear in the examination for appointment to Group 'D' post in the regular establishment in the test category but such permission was not accorded to him. He has also not been considered for absorption on regular Group 'D' post of non-test category, it is alleged, in contravention of the existing instructions issued by the Department. Hence, this application seeking direction to the respondents to regularise the services of the applicant w.e.f. 17.7.1976 as a Group 'D' employee in the regular establishment with consequential benefits, in the non-test category.

2. The applicant has stated that it is laid down in the DG P&T letter dated 29-6-1973 that preference should be given to the non-regular establishment employees for absorption in Group 'D' post of the regular establishment. Also, by the DG P&T communication dated 5-1-1980, addressed to all the Heads of the Deptt. providing that in view of the justification for creation of regular Group 'D' posts, action should be taken to create posts and fill the same in accordance with rules governing absorption of casual labourers as regular employees. The applicant has alleged that despite such instructions the respondents did not take any action to create regular posts and to absorb the applicant. It is further case of the applicant that Rule 154(a) of the Manual of Pay and Allowances of P&T Department provides for engagement of contingency paid staff as counterparts of regular Group 'D' employees and also that such contingency paid employees should be absorbed in regular establishment. An extract of the aforesaid rule is at Annexure-A8.

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It has been alleged that the respondents overlooked case of the applicant in contravention of the aforesaid rules and as a result the applicant is working outside the regular establishment as a contingency paid staff for the last 17 years. It is stated that similar provision for regularisation of the services of the contingency paid employees has been made under Rule 32 (iii) of the P&T Manual, Vol IV. An extract of the aforesaid rule is Annexure-A-9. The applicant has also relied upon the decision of a Bench of this Tribunal in OA No.1070 of 1987 decided on 27-5-1992 in which the Tribunal directed the respondents to regularise the services of Sri Basdeo, who is the applicant in that OA and was also working as C.P. Chowkidar, in the non-test category. It was also directed that the period of ^{entire} first service rendered by Sri Basdeo shall be taken into consideration for all other purposes except for backwages.

3. The respondents have filed a counter affidavit. The basic facts in this case have not been disputed in this counter affidavit. It has, however, been stated that the applicant was not allowed to appear in the examination of the test category as he did not fulfil prescribed period of service and he was a C.P. employee. It has further been stated that orders regarding regularisation of casual labourers were issued by the DG P & T by order dated 12-4-1991 in accordance with which the applicant has already been granted temporary status in Group 'D' w.e.f. 29-11-1989. It has further been stated that the regularisation of the applicant in Group 'D' in non-test category will be considered as and when

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a vacancy arises. The respondents have not denied the allegations of the applicant that his non-regularisation was in contravention of the existing instructions and Rule 154(a) of the Manual of Pay and Allowances and Rule 32(iii) P&T Manual Vol.IV. It has been reiterated that the applicant is entitled to be regularised in terms of the instructions contained in DG P&T order dated 12-4-1991 and the applicant shall be considered for regularisation when a vacancy arises.

4. The applicant has filed a rejoinder affidavit in which he has reiterated his contention that he is fully entitled for regularisation in the regular Group 'D' post, in terms of the instructions of the Department as well as statutory provisions contained in Rule 154(a) of the Manual of Pay and Allowances and also under Rule 32(2) of P&T Manual Vol.IV. He has further contended that the decision in the case of Sri Basdeo is fully applicable to him and he should get the benefit of that judgement. He has also reiterated that he is fully qualified for being allowed to appear in the examination for the test category, but the respondents are only preferring the outsiders. The applicant has also disputed the contenttion of the respondents that at present there is no vacancy for regularisation of the applicant. He has asserted that ~~several~~^a number of vacancies are still available.

5. We have heard learned counsel for both the parties and perused the records.

6. We have gone through the copy of the judgement dated 27-5-1992 rendered by a Bench of this Tribunal in the case of Sri Basdeo. In that case the applicant was appointed as a contingency paid Chowkidar on 3-2-1975 and had been working as such for several years without



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being regularised on a regular Group 'D' post. The Tribunal noticed an order dated 15-2-1988 rendered by another Bench of this Tribunal in OA No.410/1986 and came to the conclusion that the applicant belonged to non-test category and was, therefore, entitled to regularisation on a Group 'D' post without having to appear in any test. It appears that in the case of Sri Basdeo, the respondent has argued against payment of any back wages as was granted in the earlier case of Shri Ram Lakhan in OA No.410/1986. The Tribunal, while disallowing the backwages claimed by Sri Basdeo directed the respondents to regularise the applicant in Group 'D' non-test category in accordance with extant rules without any examination and also directed that the past services rendered by the applicant shall be taken into consideration for all other purposes except back wages. Since while deciding Sri Basdeo's case, the Tribunal relied upon the earlier decision in the case of Shri Ram Lakhan, we have perused the decision dated 15-2-1988 by which Shri Ram Lakhan's case was decided. A copy of this decision was made available to us by the learned counsel for the applicant during the course of the argument. In the Ram Lakhan's case, the controversy was whether the applicant was required to appear in any test for being considered for regularisation in a regular Group 'D' post. The Bench of this Tribunal deciding this matter noticed Rule 154(a) of the Manual of Pay & Allowances and held that the applicant who was also a CP Chowkidar (Darwan) belonged to non-test category and was entitled to be regularised without appearing in the examination. The Bench also noticed that the Hon'ble Supreme Court had already ^{limited} noted down the judgement in the case of "Daily Rated Casual Labourers Vs. Union of India & Others" and directed the P & T



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Department to formulate a scheme for regularisation of the casual employees. The Tribunal observed that the applicant was also entitled to the relief granted by the Hon'ble Supreme Court in the said decision. It accordingly directed the respondents to absorb the applicant in Group 'D' non-test category in accordance with Rule 154(a) of the Manual and other directions issued from time to time by the DG P&T and the directions of the Hon'ble Supreme Court contained in the case of daily rated casual labourers (supra). It did not give any direction for taking past services into consideration for all purposes as was done by a Bench of the Tribunal deciding the case of Shri Basdeo.

7. We have carefully considered the provisions of the Rules put up before us and also the decisions of this Tribunal in the cases of Sri Basdeo and Sri Ram Lakhan. We are of the view that the applicant belongs to non-test category and as such is entitled to be regularised as a Group 'D' employee in the regular establishment in accordance with the scheme already formulated by the Department of Post for regularisation of the casual employees. In fact, pursuant to such scheme, the applicant has already been granted temporary status retrospectively. He was, therefore, entitled to be regularised in his own turn depending on his seniority, amongst those CPs/casual workers who have already been granted temporary status. In case any junior to the applicant has already been regularised, the applicant shall be entitled to regularisation. We accordingly direct that in case any junior to the applicant has already been regularised



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on Group 'D' post, the applicant shall also be so regularised forthwith w.e.f. date on which his juniors were regularised. If no junior has been regularised so far, the applicant shall be considered for regularisation in his own turn.

8. This application is disposed of with the above directions. There shall be no order as to costs.

Member (J)

Member (A)

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D. S. Dabey
D. S. Dabey

Section Officer
Central Admn. Tribunal
Allahabad

Atishat
H. P. Singh
Advocate

SR
12.01.96

This Review Application
is preferred against the judgment
& order dt 11.12.95, passed by
Hon'ble Bench comprising of
Hon. Mr S. Das Gupta AM. & Hon Mr
T.L. Verma JM.

This Review Application
is supported with certified
copy of judgment & sworn
Affidavit of the petitioner.

Application is in order

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