

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 534/99 and 535/99

DATE OF DECISION: 6.9.1999

Smt. Vijaya B.Dighe Applicant.

Smt. Gkodavaribai N.Pol

Ms. Neelima Gohad for Advocate for
Shri S.P. Saxena. Applicant.

Versus

Union of India and others.-----Respondents.

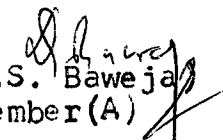
Shri R.R.Shetty for Advocate for
Shri R.K.Shetty Respondent(s)

CORAM

Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? ^Y
- (2) Whether it needs to be circulated to
other Benches of the Tribunal? ^P


(D.S. Baweja)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 534/99 and 535/99.

MONDAY THE 6th DAY OF SEPTEMBER 1999.

CORAM: Hon'ble Shri D.S. Baweja, Member(A)

Hon'ble Shri S.L. Jain, Member(J)

1. Smt. Vijaya B. Dighe
Residing at
1013, Sadashiv Peth,
Gandhati Apartments,
Flat No 401
Pune. ...Applicant in
OA 534/99
2. Smt. Gkodavaribai N. Pol
Residing at
367, Somwar Peth,
Pune. ...Applicant in
OA 535/99

By Advocate Ms. Neelima Gohad for Shri S.P. Saxena.

V/s

1. Union of India through
The Secretary
Ministry of Defence
DHQ, PO, New Delhi.
2. The Engineer-in-Chief
Army Headquarters,
Kashmir House,
DHQ, PO, New Delhi.
3. The Chief Engineer
Southern Command,
Pune.
4. Garrison Engineer(C)
Khadki, Pune. ...Respondent No. 4
in OA 534/99
5. The Commander,
Works Engineer,
Pune. ...Respondent No. 4
in OA 535/99.

By Advocate Shri R.R. Shetty for Shri R.K. Shetty.


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ORDER (ORAL)

{Per Shri D.S.Baweja, Member(A)}

Both the OAs are being heard together and being disposed of by a by a common order as the same facts and question of law is involved.

2. Both the applications have been filed by the applicants who are wives of the deceased Government employees who were appointed as LDCs prior to 1.1.1947 in M.E.S. under the Ministry of Defence. Based on the First Pay Commission, the existing grades of clerks A, B, and C were abolished and two grades of clerks, viz L.D.C. and U.D.C. came to be in existence with effect from 1.1.1947. As per the Pay Commission recommendations, Grade B clerks were classified and treated as U.D.C. with effect from 1.1.1947. The claim of the applicants is that since the deceased Government employee was working as Grade B clerk prior to 1.1.1947, they were entitled to be placed on the grade of U.D.C. with effect from 1.1.1947. Accordingly these OAs have been filed on 31.5.1999, seeking the relief of extending the benefits and re-fixation of pay of the deceased Government employee as UDC from 1.1.1947. The applicants also pray that the respondents be directed to calculate the difference of arrears of pay arising out of the above re-fixation of pay from 1.1.1947 and also further promotions if any of the deceased employee and revision of the pensionary benefits.



3. We have heard Shri S.P.Saxena counsel for the applicants and Shri R.R.Shetty for Shri R.K.Shetty counsel for the respondents at the stage of admission. The respondents have filed reply opposing the applications stating that the applications are barred by limitation and beyond the jurisdiction of this Tribunal as the cause of action arose on 1.1.1947.

4. The issue under challenge in these OAs is no longer resintegra in view of the judgement of the Hon'ble Supreme Court dated 4.11.1987 in Civil Appeal No. 4201/95. A number of OAs seeking the same relief have been recently decided by this Bench relying ~~up~~ on the judgement of Hon'ble Supreme Court. One such order of this Bench in OA 477/97 and 616/97 decided on 10.11.1997 has been brought on record. In view of the judgement of the Hon'ble Supreme Court referred to above, the deceased Government employees are entitled for re-fixation of pay and other consequential benefits from 1.1.1947 on being designated as UDC.

5. In the result, both the OAs are allowed with a direction to the respondents to re-classify the deceased employees as UDCs with effect from 1.1.1947 and to pay the applicants the difference of arrears of pay as per the direction of the Supreme Court in Civil Appeal No. 4201/85. The respondents are also directed to review the case of promotion, re-fixation of pay,



seniority and re-calculation of pension and gratuity in accordance with rules. However the payment of arrears, if any shall be restricted to 50% as has been provided in the recent orders. In the circumstances of the case, the respondents are granted six months time from today to comply to this order. No order as to costs.

S.L. Jain
(S.L. JAIN)
MEMBER(J)

NS

D.S. Baweja
(D.S. BAWEJA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.78/2000 in OA.NO.535/99

R.P.No.39/99 in OA.No.534/99

Dated this the 28th day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Smt.Godavaribai N.Pol

...Applicant

None for the applicant

vs.

Union of India & Ors.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

TRIBUNAL'S ORDER

{Per : Shri S.L.Jain, Member (J)}

The Respondents in OA.NOs.534 and 535/99 which was decided vide order dated 6.9.1999 have filed the Review Petition No.39/99 and 78/2000 respectively. Review Petition No.39/99 is within the prescribed period of CAT (Procedure) Rules,1987. In respect of R.P.No.78/2000 it is stated that the copy of the order was received by them on 25.9.1999^{and} have filed this Review Petition after the prescribed period mentioned in Rule 17 (i) Central Administrative Tribunal'(Procedure) Rules, 1987 of 10 months and 16 days along with M.P. for condonation of delay.

Dy

..2/-

2. On perusal of the delay condonation application, we find that in the public interest, judicial discipline demands for review. We are not able to gather any other fact or reason for delay condonation in the said application. We do not find any reason when there exists none to condone the delay, i.e. of 10 months and 16 days. As such, delay condonation application deserves to be dismissed and is dismissed accordingly. (AIR 1999 SC 40 - M.Satyanarayana Murthy & Ors. vs. Mandal Revenue Officer-cum-Land Acquisition Officer).

3. In view of the said finding, there is no necessity to record an opinion on merits of the Review Petition No.78/2000. If we have taken a contrary view, our opinion regarding merits of the Review Petition is recorded below only with a view to attain finality of the litigation atleast at this level.

4. The respondents in para 3 of the Review Petition stated that at the time of filing the written statement dated 14.8.1999, the particular case law as reproduced through "All India Services Law Journal for August, 1999" was not received. The respondents further wish to state that the decision of CAT PB, New Delhi judgement dated 15.7.1998 in OA.No.580/94 which is fully based on the decision of Apex Court is binding on this Tribunal under Article 141 of the Constitution of India.

5. In view of the said decision, the respondents are seeking the review of an order passed in OA.NO.535/99 on 6.9.1999.

[Signature]

..3/-

6. 2000 (2) A.I.SLJ 108 - Ajit Kumar Rath vs. State of Orissa & Ors., the Apex Court has held that :-

"The power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error or law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

"Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."

It is stated in delay condonation application that "the undersigned and our counsel lost sight of the said judgement of the Hon'ble Supreme Court Order dated 24.10.1997 and order dated 15.7.1998 of the Hon'ble Principal Bench of CAT which is sincerely regretted".

Pd

..4/-

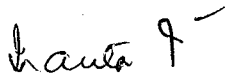
7. 1997 (4) SCC 478 - Dokka Samuel vs. Dr. Jacob Lazarus Chelly, the Apex Court has held that "Omission on the part of counsel to cite an authority of law does not amount to error apparent on the face of the record so as to constitute ground for reviewing prior judgement".

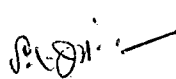
8. The learned counsel for the respondents - Review Petitioner relied on an order passed by this Bench in Review Petition No.45/99, 50/99,53/99 on 30.3.2000, particularly on para 11 which is as under :-

" Having regard to the undue delay in approaching this Tribunal and also claiming retrospective benefit from 1.1.1947 and particularly in view of the judgement of the Principal Bench and the Supreme Court mentioned above, we feel that our order granting 50% of arrears from 1.1.1947 requires to be reviewed and accordingly we review the same."

In view of the law stated by us pronounced by the Apex Court of the land, the order passed in Review Petition can not assist the respondents.

9. In the result, we do not find even any merit in reviewing the order passed by this Tribunal dated 6.9.1999. As such, delay condonation application as well as review petition (both) deserves to be dismissed and are dismissed accordingly. No order as to costs.


(SMT.SHANTA SHASTRY)
MEMBER (A)


(S.L.JAIN)
MEMBER (J)

mrj.

Ad: 28.5.2002
Order/Judgment despatched
to Applicant/Respondent(s)
on 22.7.2002
