CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

(25)

R.P.No.48/2000 in OA.NO.242/95

Dated this the 31st day of January 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

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

Dr.D.D.Kadam & Ors. ...Applicants

By Advocate Shri G.K.Masand

vs.

Union of India & Ors. ...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

TRIBUNAL'S ORDER

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

The applicants in OA.No.242/95 have filed this Review Petition in respect of an order passed by the Bench (consisting of Hon'ble Shri B.S.Jai Parameshwar, Member (J) and Hon'ble Shri B.N.Bahadur, Member (A) on 28.7.2000 dismissing the OA.

2. One of the applicants Dr.(Mrs.) Sujata Bhushan Khadilkar) in OA.NO.242/95 along with others filed OA.NO.619/88 before this Bench which was decided on 18.6.1992. The operative part of the order is as under :-

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" We need not repeat the order passed by the Central Administrative Tribunal (Principal Bench) Suffice it to say that paragraph 20 of the order of the Tribunal shall form part of this order and the respondents shall carry out the directions as contained in paragraph 20 of the said judgement (OA.NO.1259/90 etc.)

Learned counsel for the respondents submits that the directions No.(ii) as contained in para 20 of the central Administrative Tribunal runns counter to the judgement of the Supreme Court in the case of Union of India vs. Prof.S.K. Sharma, Supreme Court Cases Weekly, 1992, page No.1750. We may note that the applicants before us are similarly situated as the applicants who were before the Central Administrative tribunal. Both the sets of applicants are Doctors employed under the Central Health Service. Both the sets have been working since long on short term appointments. Both the sets are being treated as adhoc appointees. We, therefore, consider it just and proper that the two sets should be kept at par with each other. We are, therefore, refraining from expressing any opinion as to whether S.K.Sharma's case supra is apposite.

This application is allowed with the direction that the respondents shall comply with the directions of the Central Administrative Tribunal as contained in paragraph 20 of the order of that Tribunal dated 8.10.1991.

Para : 20 of Judgement in O.A.No.1259 of 1990

20. The applications are, therefore, allowed and disposed of with the following orders and directions :-

(i) The respondents are directed to refer the cases of the applicants and those similarly situated to the Union Public Service Commission for the purpose of regularisation of their services as Medical Officers. They should be treated as forming a separate block for the purpose of regularisation. Regularisation should be based on the evaluation of work and service records of the applicants and those similarly situated. The respondents shall do the needful in the matter within a period of four months from the date of receipt of this order.

(ii) After the services of the applicants are regularised through the Union Public Service Commission, their seniority shall be reckoned from the dates of their initial appointment on adhoc basis as Medical Officers, after condoning the technical breaks in their ad hoc service.

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The service rendered by them during the period of operation of the stay order passed by the Tribunal shall also count as service for the purpose of regularisation.

(iii) After regularisation of the services of the applicants as indicated in (i) and (ii) above, the respondents will be at liberty to post the applicants as Medical Officers at places where vacancies exist. Till they are so regularised, the respondents are directed to accommodate the applicants at their present places of postings in the Hospitals at Delhi. The interim orders already passed in these cases are hereby made absolute.

(iv) Till the applicants are so regularised, they would be entitled to the same pay scales, allowances and benefits of leave, increments etc. and other benefits of service conditions as are admissible to regularly appointed Medical Officers. In the facts and circumstances, we do not direct the respondents to pay them arrears of pay and allowances for the post period.

(v) There will be no order as to costs."

3. The respondents preferred the Civil Appeal No.2867/93 which was decided by the Apex Court of the Land on 3.5.1993. The operative part of the order is as under :-

"The only direction which we propose to modify is in regard to the fixation of seniority in paragraph 20(2) of the impugned judgement the Tribunal has observed that after the services of the applicants are regularised through UPSC, they will be accorded seniority from the dates of their initial appointments on adhoc basis as Medical Officers after condining the technical breaks in their adhco services, the services rendered by them during the period of operation of the stay order passed by the Tribunal is also directed to be counted as service for the purpose of regularisation. The learned counsel for the appellents submitted that the question of seniority was not speficically put in issue before the tribunal since no such relief was claimed in the petition. He further states that

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such a direction without others likely to be affected being parties, would create an inter se dispute regarding seniority which would have to be resolved in accordance with the extant rules. We, therefore, merely clarify that the direction in paragraph 20(2) in regard to fixation of seniority shall be modified to mean that fixation of seniority would be in accordance to the extant rules. We, however, do not interfere with the direction that service rendered during the pendency of the interim order of the tribunal shall also be taken into account for the purpose of regularisation. Except for this modification, we do not interfere with the impugned order of the Tribunal. The appeal will stand allowed to the above extent only. No order as to costs. The incumbents will be at liberty to question the seniority order if it is not in accordance with the extant fules applicable to that group of employees in any appropriate forum."

4. Thereafter, the applicants filed the C.P. which was decided by this Tribunal dismissing the same. While C.P. was pending, the impugned order (Annexure-'A' OA. page 18 to 23) was passed. The grievance of the applicants relates to the date of regularisation which is fixed on 21.9.1994 while the applicants were engaged long back on monthly basis. Thereafter, they were made adhoc. In pursuance of the order of this Bench which was modified by the Apex Court, the impugned order was passed.

5. On perusal of the grounds of Review which are enumerated in para 16 (a) to (i), we find that the applicants' grievance is that the order of the Tribunal was not interfered with by the Apex Court relating to the directions that it has formed a separate block for the purpose of regularisation and that regularisation should be based on the evaluation of the work and

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service record of the applicants and those similarly situated, the respondents failed to treat the applicants as forming a separate block in the same manner as they had treated earlier batch of the applicants, namely, Dr.P.P.C. Rawani & Ors. Though this fact was very much highlighted at the time of hearing, this aspect of the matter has not at all been considered by this Tribunal. In Contempt Petition filed by the applicants in respect of OA.NO.619/88 which was in respect of non implementation of the earlier order, impugned order dated 27.9.1994 which was issued during the pendency of the said Contempt Petition, has been missed by the Tribunal and unintended weightage has been given to the dismissal of the contempt petition. There exists a right to challenge the seniority order to the extant rules which includes a proper challenge to the legality and/or constitutional validity of the extant rules. Some of the Doctors at Sr.No.212,213,214 & 215 of order dated 7.5.1992 (Ex.'E' to the OA.) were not the parties to the case filed by Dr.P.P.C. Rawani & Ors. and even though some of them had been appointed much after the appointment of the applicants, they had been given the benefit of the dates of their initial appointment for the purpose of regularisation and seniority. The Tribunal has missed the said fact. In Rawani's case, the Supreme Court themselves fixed this date from the date of their initial appointment or 1.1.1973 whichever is later. As per service jurisprudence, a person is appointed on a regular basis on the date he joins the post. The applicants had been appointed long

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back then 21.9.1994. The decision of the UPSC to regularise the services of the applicants from 21.9.1994 is arbitrary, discriminatory without a notice to the affected parties, as such illegal, untenable and requires reconsideration. The Tribunal has erred in relying the case of Dr.Haque vs. Union of India & Ors. and failed to appreciate that the said judgement pertains to the Railways and the Apex Court itself had stated that the order passed in the case of Dr.P.P.C.Rawani could not be applied to the Railways. The case of the applicants pertains to the same Central Government Health Scheme to which Dr.P.P.C. Rawani belongs and also similarly placed like those Doctors in the case of Dr.P.P.C.Rawani & Ors.

The case of Chandrakishore & Ors. vs. State of Manipur was not at all considered by the Tribunal. The case of Union of India vs. Dr.H.B.Mahajan was relied on without going into the facts of the said case, which has no bearing in the present case. The applicants who were similarly placed to Dr.P.P.C.Rawani & Ors. belonged to the same Central Government Health Scheme, their appointment being in the same manner and regularisation through the UPSC, through the intervention of the Tribunal were not similarly treated resulting failure of justice. Hence, this Review Petition.

6. The respondents have resisted the claim of the applicants and prayed for dismissal of the Review Petition.

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7. After hearing the parties, the first point which is worth mentioning is that the underlined of the object of the provisions of review is neither to give a Court to write a second judgement not giving a second inning to a party who has lost the case. Therefore, utmost care ought to have exercised by the Court in granting the review.

8. The grounds of review which are mentioned under order Rule 47 (i) CPC, (1) Discovery of new and important matter or evidence, (2) error apparent on record, discovery of new and important matter or evidence, (3) Any other sufficient reason. Regarding discovery of new and important matter or evidence, on perusal of the grounds stated above, the applicant has not come to this Tribunal. The applicants' case is based on ground- error apparent on record. What is an error apparent on the face of record is cannot be defined preciously or exhaustively and it should be determined on the facts of the each case. Such error may be one of fact or law. However, no error can be said to be an error if it is not self-evident and requires an examination or argument to establish it. In other words, an error cannot be said to be apparent on the face of the record where one has to travel beyond the record to see if the judgement is correct or not.

9. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of record. In Thungabhadra Industries Pvt. Ltd. vs. Govt. of A.P., the Supreme Court has observed as under :-

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" A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out".

Keeping in view the said principle in mind, the claim of the applicants that the order passed by this Tribunal is erroneous and it deserves to be corrected is to be decided . As only apparent error can be corrected which are within the ambit of review and erroroneous decision which have been arrived at by the Tribunal after considering the arguments not agreeing with the contention of the applicants cannot be corrected in the review.

10. In AIR 1979 SC 1047 and AIR 1972 (Gujarat) 227, it has been held that an erroneous decision on merits cannot be said to be an error apparent on the face of the record. Similarly in AIR 1972 SC 1621 referred above Thungabhadra Industries Pvt. Ltd. vs. Govt. of A.P., an erroneous view of law cannot also be treated a ground for review. As such, the claim of the applicants that the order (dated 28.7.2000) deserves to be reviewed on the grounds mentioned in the review petition deserves to be rejected. In the result, review is dismissed with no order as to costs.

(S.L.JAIN)
MEMBER (J)

(B.N.BAHADUR)
MEMBER (A)

mrj.