

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.5/2001
IN OA 90/95.

DATED: 7th Feb, 2001.

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

1. Union of India through
Regional Director
Employees' State Insurance Corporation,
E.S.I.C. Bhawan, Lower Parel,
Bombay - 400 013.
2. Director General E.S.I. Corporation,
Panchdeep Bhavan,
Kotla Road,
New Delhi. ... Review Petitioners
(Original Respondents)

V/s.

Smt. Momina H Sayed,
Working as Lower Division Clerk,
Posting Section (L.O. Madanpura)
E.S.I. Corporation,
Panchdeep Bhavan,
Mumbai - 400 013.

Respondent
... (Original Applicant)

TRIBUNAL'S ORDER:

Per Smt. Shanta Shastri, Member(A)

This Review Petition is filed by the respondents in OA-90/95 which was decided on 9/11/2000. The OA was partly allowed directing the original respondents, that is the review applicants to pay difference in salary of Upper Division Clerk and LDC to the Original applicant for the period from 5/8/1988 to 10/10/91 alongwith 12% interest. Also the orders dated 17/8/93 and 28/4/94 were quashed and set aside in so far as they related to the non specifying of the period of reduction in rank.

2. The Review Petitioners have argued that the applicant in the OA was paid the wages of UDC cadre w.e.f. 11/10/91 itself even though she was not working as UDC. Further, reliance has been placed on a judgement of the Guwahati Bench of this Tribunal

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in Rakhalchandra v/s. Union of India. Also the Supreme Court has observed in the case of Managing Director Food Corporation of India V/s. Narendra Kumar Jain that the ratio in Mohd. Ramzan Khan's case is applicable only prospectively. Therefore, no punishment imposed earlier to the date of the judgement in Ramzan Khan's case shall be open to challenge on the ground of non supply of enquiry report. In the present case, the penalty order dated being 5/8/1988 is being set aside on the technical ground of non supply of inquiry report, the principle of 'no work no pay' applies and hence the Tribunal has failed to appreciate this fact. Secondly, the penalty orders dated 17/8/93 and 28/4/94 have been set aside on the technical ground that the proforma prescribed below FR 29 has not been used while passing the penalty order of reduction to the lower cadre for indefinite period. The Review Petitioners have submitted that the operative part of the order appears to be very ambiguous so far as it allows the OA partly but grants the entire relief of quashing and setting aside penalty orders and giving direction for difference of pay with 12% interest. They are therefore seeking clarification.

3. We have considered the grounds for review. The review petitioners had cited the judgement in the case of Rakhalchandra (supra) during the course of hearing of the OA and the same was noted by us. Raising the same ground again amounts to re-arguing of the case. Also having conducted fresh enquiry from the stage of furnishing of enquiry report as the order between the parties has become final the respondents are now not entitled to raise this plea in view of Ramzan Khan's ratio. This ground is not maintainable. According to us, the direction to pay the difference in pay from 5/8/88 to 10/10/91 does not call for any

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review. As regards the clarification on the partial setting aside of the impugned orders relating to the portion concerning the mentioning of the period for which the applicant was to be reduced in rank it was observed that the impugned orders are silent on the period for which the penalty of reduction in rank is to be in operation, it could be for an indefinite period or for a specific period but it needs to be specified. The ambiguity is in the impugned order in not mentioning the period of reduction and not in the Tribunals order.

4. In our view, no review is called for. Accordingly, the RP is rejected.

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

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

abp

13/12/01
order/Judgement despatched
to applicant, silent (s)
on 13/12/01

hp