

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(IN CIRCULATION)

**RA No. 060/00019/2016 IN
OA No.060/01054/2014**

Date of decision: 12.4.2016

...
**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**
...

1. Ganesh (President UT Road Workers Union) son of Dev Raj, working as Beldar, Road Sub Division No.R-2, Sector-9, Division CP-1, U.T. Chandigarh, resident of H. No.1253, Mauli Jagran Complex, U.T. Chandigarh.
2. Bish Ram (General Secretary, UT Road Workers Union) son of Ram Sunder, working as Beldar, Road Sub Division No.3, Sector-9, CP Division No.2 (R), UT, Chandigarh, resident of House No.3212, Maloya Colony, UT, Chandigarh.
3. Inder Pal (Cashier, UT Road Workers Union) son of Gaya Parshad, working as Beldar, Road Sub Division No.C-10, Sector-26, Chandigarh, resident of H. No.729, Kishangarh, UT, Chandigarh.
4. Smt. Chander Wati wife of Sh. Jhuri, working as Beldar, Road Sub Division C-10, UT, Chandigarh, resident of H. No.729, Kishangarh, UT, Chandigarh.
5. Guna Sekar son of Sh. Kangai, working as Beldar, Road Sub Division R-3, Sector-9, Chandigarh, CP Division No.2(R), resident of H. No.616, Village Palsura, UT, Chandigarh.

...APPLICANTS

BY ADVOCATE: Sh. Beant Singh Seemar.

VERSUS

1. Secretary, Department of Personnel, Chandigarh Administration.
2. Secretary Engineering, Chandigarh Administration, UT, Chandigarh.
3. Chief Engineer, UT, Chandigarh.
4. Commissioner, Municipal Corporation, Chandigarh.

Re —

5. Chief Engineer, Municipal Corporation, Chandigarh.
6. Superintending Engineer, Construction Circle-I, Chandigarh.
7. Superintending Engineer, Construction Circle-II, Chandigarh.

...RESPONDENTS

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. This Review Application under Section 22(3) (f) of the Administrative Tribunal Act, 1985 read with Rule 17 of the Central Administration Tribunal (Procedure) Rules, 1987 for reviewing and re-calling the judgment/order dated 04.01.2016.

2. MA No.060/00425/2016 has been filed under Section 5 of the Indian Limitation Act, 1963 read with Section 22(3) (f) of Administrative Tribunals Act, 1985 for condoning the delay of 45 days in filing the Review Application. It is stated in the MA that the applicants are daily wagers and could not arrange the money in time to engage counsel for filing the Review Application and it was only after they were able to garner necessary funds that they filed the RA. Therefore, the delay of 45 days in filing the same may be condoned.

3. In the grounds taken in the RA, it is stated as follows:-

- "3. That it is an admitted fact of the case of the applicants that these applicants are working as daily wagers for more than 10 years with the respondents and their services are availed continuously by the respondents for more than 10 years. It is worth pertinent to mention it here that all these applicants are working for almost 40 years as Beldars on daily wages.
4. That this issue of their tenure of service was never raised by the respondents and these applicants are working for more than 40 years is also not disputed.
5. That this Hon'ble Court while deciding the OA has relied upon the judgment dated 11.11.2011 in CWP



No.14796 of 2003, 8903 of 2010 and 22092 of 2010 in case titled as Avtar Singh & Ors. Vs. State of Punjab and others, passed by our Hon'ble High Court and has dismissed the OA of the applicants by relying on the above noted judgment i.e. Avtar Singh (supra), but this Hon'ble Court has not examined and noticed the exceptions which are provided in the judgment i.e. Avtar Singh (supra). The relevant concluding paragraph of this judgment showing these exceptions has been reproduced below for the ready reference of this Hon'ble Court as follows:-

"...However, it is noticed that certain daily wagers are permitted to continue for long number of years. Keeping in view the ratio of the aforesaid judgments, we hold that daily wagers, ad hoc or contractual appointees are not entitled to minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity carried out by the daily wagers and the regular employee is similar, but such general principle shall be subject to the following exceptions:-

1. A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equal opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

2. But if daily wagers, ad hoc or contractual appointees are not appointed against the regular sanctioned post and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

3. In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.

Accordingly, the writ petitions are posted for hearing before an appropriate Bench for decision in view of the above opinion."

As

Copy of the judgment dated 11.11.2011 is annexed as Annexure RA-2 alongwith this review application."

6. It is stated that the claim of the applicants is covered by exception no.2, and hence, they are entitled to minimum of the regular pay scale as is given to the newly appointed regular beldar doing the same work as the applicants i.e. Rs.6950 as per Annexure A-13 of the OA.

7. We have carefully gone through the paper-book in OA No.060/01054/2014 as well as the order dated 04.01.2016 that is the subject of this RA. The OA has been decided taking into account the full facts and material on record and also considering the judgments cited by learned counsels for the applicants and the respondents. The judgment in Avtar Singh (supra) was infact cited by learned counsel for the respondents and if the same was to be rebutted as not applying to the case of the applicants, it was the responsibility of the learned counsel for the applicants to do so at the time when the arguments were heard. The present RA appears to be an attempt to seek rehearing of the whole matter which is beyond the scope of an RA as per Order 47 Rule 1, CPC.

8. Hence the RA is rejected. *MA is also disposed of accordingly.*

(RAJWANT SANDHU)
MEMBER (A)

(DR. BRAHM A. AGRAWAL)
MEMBER (A)

Place: Chandigarh.
Dated: 12.4.2016

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