

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-185/2015 in
OA-4129/2013**

Reserved on : 20.01.2016.

Pronounced on :27.01.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Union of India
Through Joint Secretary (AD),
Ministry of Communications & I.T.,
Department of Posts, Dak Bhawan,
South Block, New Delhi.
2. The Chief Postmaster General,
Delhi Circle, Meghdoot Bhawan,
New Delhi-1.
3. The Sr. Superintendent,
Delhi Sorting Division,
Delhi-6.

.... Review Applicants

(through Sh. Ravi Kant Jain, Advocate)

Versus

Smt. Sheela Devi,
W/o late Sh. Dalpat Ram,
At per with regular Group-D employee,
Delhi Sorting Division, Delhi
R/o H.No. 434, B-Block, Gali No.2,
Rajeer Colony, Gharoli Extension,
Near Mayur Vihar, Phase-III,
Delhi-96.

..... Respondent

(through Sh. Pradeep Kumar, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by respondents in OA for review of our order dated 28.05.2015 by which the O.A. was allowed. The operative part of the order reads as follows:-

"13. In view of the above position, as the Applicants service from 17.07.1980 to 31.12.1987 was on part time basis, in terms of the aforesaid judgment in the case of Shaik Abdul Khader (supra), 25% of the said service shall be treated as qualifying service (i.e. 7 years, 5 months and 13 days). Thereafter, 50% of the service rendered as a full time Farash from 01.06.1997 to 31.05.1998 shall also be treated as a qualifying service (i.e. 1 year, 9 months and 29 days). Again, the entire service rendered by the Applicant as temporary status employee w.e.f. 01.06.1998 till the date of retirement, i.e. 31.12.2012 shall be treated as qualifying service (i.e. 14 years, 6 months and 30 days). On the same analogy, she shall also be considered for grant of benefits under the ACP/MACP Schemes. Thereafter, her pensionary benefits shall also be determined and paid upto date with 9% interest on the arrears. The aforesaid directions shall be complied with, within a period of three months from the date of receipt of a certified copy of this Order. No costs."

2. The respondent in review application (OA applicant) has filed reply opposing the review application. During the course of the arguments, learned counsel for the review respondent also relied on the following three judgments:-

- (i) **Jeewanti @ Jeewa Devi Vs. UOI & Ors.**, 2015(3)(CAT)333.
- (ii) **Parsion Devi & Ors. Vs. Sumitri Devi & Ors.**, JT 1997(8)SC 480.
- (iii) **State of Karnataka & Ors. Vs. M.L. Kesari & Ors.**, 2011(1)AISLJ SC 83.

3. We have heard both sides and have perused the material on record. The review applicants have taken the following grounds to support the review application:-

(i) This Tribunal has allowed the O.A. relying on the judgment of Hon'ble Andhra Pradesh High Court in the case of **General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. & Anr. Vs. Shaik Abdul Khader** [WP(C) No. 10837/2001] and decision of this Tribunal in OA-1502/2005 (**Chander Pal & Anr. Vs. UOI & Ors.**) dated 16.02.2006. Learned counsel submitted that these judgments were based on Railway Service (Pension) Rules, 1993 and were not applicable to the OA applicant herein who was working in the Postal Department. He submitted that this is an error apparent on the face of the record.

While it is true that the above quoted judgments pertained to the Railway Department, learned counsel could not indicate as to why the ratio laid down in these judgments was not applicable to the Postal Department and how Postal Department Pension Rules were different from Railway Service (Pension) Rules. Hence, we do not find much substance in this argument. It is noteworthy that the judgment in the case of **Chander Pal** (supra) has been upheld by Hon'ble High Court of Delhi and SLP against the same had also been dismissed. Similarly, SLP against the judgment in the case of **Sheikh Abdul Khader** was also dismissed. Thus, the judgments had attained finality.

(ii) Next the review applicants have relied on the judgment of this Tribunal in OA-1907/2006 (**Sh. Lal Singh Vs. UOI**) and the judgment of Hon'ble High Court of Delhi in **Writ Petition No. 5299/2007**. According to the review applicants, these judgments were not considered by the Tribunal.

However, we notice from the OA file that neither there is a mention of the judgments in the pleadings of the respondents nor is there any record of these judgments being handed over at the time of the arguments. Hence, this ground of the review applicants is also not acceptable.

(iii) Next the review applicants argued that this Tribunal had opined that the respondent department had failed to prepare a common panel of part time and full time casual labourers considering granting them regular appointments from the same as provided in Para-9 of DoP&T Instructions dated 20.09.1991. This according to the Tribunal was the main reason why such regular appointment could not be provided to the OA applicant. Learned counsel for the review applicants submitted that this finding of the Tribunal was factually incorrect inasmuch as the respondent department had actually prepared such a panel.

We have perused the OA file and we do not find any evidence either in the pleadings or in the documents submitted by the respondents of such a panel having been prepared by them. On page-81 of the OA file the communication dated 13.01.2014 is available in which names of 14 casual labour employees including the applicant figure and by which these casual

labourers were granted temporary status w.e.f. 01.06.1998. However, it is not clear from the same whether it was a common list of full time and part time employees. In fact, from the dates of appointment mentioned in the same it appears to be a list only of part time employees. Keeping in view the aforesaid, it is difficult to accept the contention of the review applicants.

(iii) The review applicants have also stated that this Tribunal had granted benefits to the OA applicant much beyond what he had prayed for in his OA. Thus, ACP/MACP benefits have been granted, which were not asked for. Similarly, it has been ordered that 25% of the service w.e.f. 17.07.1980 to 31.12.1987 and 50% of the service w.e.f. 01.06.1997 to 31.05.1998 be taken into account while computing the retiral benefits even though the OA applicant has never prayed for inclusion of the period w.e.f. 17.07.1980 to 31.12.1987 and 01.06.1997 to 31.05.1998 as qualifying service in her prayer.

We do not find this argument of the review applicants to be very convincing. The whole case of the OA applicant is based on the argument that no benefit of part time service has been given to her for the purpose of retiral benefits. In this regard, the following extract from the synopsis given in the OA at page-F is relevant:-

“This application is being made by the applicant against the above mentioned impugned orders for redressal of her grievances. Despite the fact that she had rendered more than 32 years of dedicated service (From 16.7.80 to 30.5.97 as Part Time Casual Labourer; From 1.6.97 to 30.5.98 as Full Time Casual Labourer; From 1.6.98 to 30.5.01 as Casual Labourer with Temporary Status and from 1.6.2001 to 31.12.2012 as Casual Labourer with Temporary Status at par with Regular Group ‘D’ employee), she has not been regularised on the post for the

reasons best known to the respondents and for no fault of hers despite her several representations. She had given the prime of her youth to the Department but the Department instead of acting as a model employer has given her a shabby treatment. She superannuated on completion of 60 years of age and her services have been dispensed with w.e.f. 31.12.2012 (AN) without paying her any retiral or any other benefits."

The same is more or less repeated in Para-1 of the OA. Further, in the relief clause, the OA applicant has asked for regularization as well as of consequential benefits. This would also include ACP/MACP benefit once the request for regularization is conceded. Hence this ground of the review applicant is also not acceptable.

3.1 The respondent in review application has relied on the judgments in the case of **Jeewanti** (supra) and **M.L. Kesari** (supra). However, we find from the record of the OA that these judgments were not cited at the time of decision in the OA. Thus, citing them at the stage of review is only an effort on the part of the OA applicant to re-argue his case. This is clearly impermissible in the review application. The OA applicant has also relied on the judgment of Supreme Court in the case of **Parsion Devi & Ors.** (supra), in Para-9 of which the following has been held:-

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

However, we find that this judgment is not applicable in the present case since the review applicants have only pointed out certain alleged errors in the judgment and have not tried to re-argue the matter.

However, we notice from our judgment that having come to the conclusion that no common panel of part time and full time casual labourers was prepared by the department, this Tribunal proceeded on the assumption that had such a panel been prepared the applicant would definitely have found regular employment. Such a conclusion should not have been arrived at merely by seeing the length of service of the applicant. Record of other similarly placed employees as well as number of vacancies available for regularization should also have been seen. It would have been more appropriate to give directions to the OA respondents to carry out this exercise. Instead of doing that, the Tribunal presumed that the OA applicant would definitely have been regularized. Thereafter, relying on the judgment of **Sheikh Abdul Khader** (supra) and **Chander Pal & Anr.** (supra), directions have been given to the OA respondents to give retiral benefits to the OA applicant after treating 25% of her part time service as qualifying service and full service rendered by her as temporary status employee. Thus, an error apparent on the face of the record has been committed by coming to the conclusion that the OA applicant would have definitely become regular employee and, therefore, entitled to the benefits of the judgments in the case of **Sheikh Abdul Khader** (supra) and **Chander Pal & Anrs.** (supra), which

apply only to employees who have been regularized after being employees both on part time and full time basis.

4. We are, therefore, inclined to allow this review application and restore the O.A. for fresh adjudication.

5. List the OA for hearing on 10.02.2016.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/