Central Administrative Tribunal
Principal Bench, New Delhi.

OA-854/2015

Reserved on : 11.09.2017.

Pronounced on : 28.09.2017.

Hon'ble Ms. Praveen Mahajan, Member (A)

Smt. Keshar Devi, 40 years
W/o late Sh. Rattan Singh,
R/o House No. 2497, Naya Nagala,
Boga Ka Bara,
Mathura (UP). .... Applicant

(through Sh. V.K. Sharma, Advocate)

Versus

1. Union of India (through :-The Chief of Army Staff),
   Army Headquarters, DHQ Post Office,
   New Delhi.

2. The Director General of Medical Services(Army),
   (Army Medical Corps), Army Headquarters,
   DHQ Post Office, New Delhi.

3. The Deputy Director of Medical Services,
   (Army Medical Corps), Army Headquarters,
   Uttar Bharat Area, Barelly-Cantt.(UP).

4. The General Officer Commanding,
   Headquarters 1 Corps., C/o 56 A.P.O.

5. The Commanding Officer,
   4001-Field Hospital, PIN-904001,
   C/o 56 A.P.O. .... Respondents

(through Sh. Gyanendra Singh, Advocate)

O R D E R

The applicant has filed this O.A. seeking setting aside of an arbitrary break in her long service of 15 years (as monthly rated

casual employee) by the respondents vide impugned orders dated 17.10.2010 and 20.10.2010. Briefly stated, the case of the applicant is that she is serving as daily rated worker, under respondent No.5 since 1999. It is submitted that the applicant had earlier filed OA-1133/2008 before this Bench of CAT jointly with her similarly placed senior, namely, Smt. Maya Devi Dhar, which was allowed on 11.11.2008 by the Tribunal. Since Smt. Maya Devi Dhar had been in service continuously since the year 1986, she was ordered to be granted the benefit of temporary status and regularization as per 1993 Scheme of Government of India. The current applicant was not found eligible for similar relief as allowed to her senior. The Tribunal advised her to prefer a representation to the respondents for grant of higher daily payment in accordance with the Minimum Wages Act. A copy of this order is annexed as Annexure A-8. It is further submitted that the respondents ordered termination of the service of Smt. Maya Devi Dhar w.e.f. 22.11.2008 (Annexure A-9). The favourable order given to Smt. Maya Devi Dhar by the Tribunal was contested by the respondents authorities before Hon'ble High Court of Delhi vide Writ Petition (Civil) No. 8494/2011, which was dismissed on 05.12.2011 (Annexure A-11). The respondents authorities further challenged the order of the Tribunal and of Hon'ble High Court of Delhi before Hon'ble Supreme Court, which was dismissed on 07.01.2013 at the admission stage. However, no relief was granted to

Smt. Maya Devi Dhar till she filed an MA-998/2014 for execution in OA-1339/2009 in the Tribunal. Resultantly, she was provided with appointment in the regular post of Ward Shayaka in the pay scale of Rs. 5200-20200 with grade pay of Rs.1800 w.e.f. 09.10.2014. Copy of her appointment is filed as Annexure A-12. The applicant states that since Smt. Maya Devi Dhar has been reinstated in service, she has revived her own case by filing afresh OA with claim for legitimate relief, as granted to a similarly placed person.

2. The applicant avers that she remained in service as Shayika w.e.f. April, 1999 with the respondents department. On 11.08.2001, she represented to the respondents seeking her regularization in her post against any available vacancy (Annexure A-6). This representation was not considered by the authorities. The applicant then moved an appeal dated 10.06.2007 along with her senior Smt. Maya Devi Dhar. However, these remained unattended till common order was passed by the Tribunal on 11.11.2008, referred to above.

3. In order to give an artificial break to her long service rendered since April, 1999, the respondents issued her letter dated 17.10.210 stating that her service term and conditions have been completed on 18.10.2010. Through another letter dated 20.10.2010, issued by the Offg. Commanding Officer, afresh order of appointment on contract basis w.e.f. 20.10.2010, with revised terms and conditions of

engagement at a fixed honorarium of Rs.1800/- per month was issued. The applicant further submits that she was initially serving and appointed at Headquarters 1 Corps, C/O 56 A.P.O., her Controlling and Appointing Authority was the General Officer Commanding and that no other authority other than the Competent Appointing Authority was authorized to terminate her services and her service conditions were regulated through circular dated 21.04.1986. The same cannot be changed arbitrarily without prior notice and opportunity of hearing. It is a settled law that an employee posted under the same employer cannot be deprived of the benefit of her earlier posting. In this case, she has been deprived of continuity through an artificial break in service. This arbitrary act of the respondents is illegal and violates the spirit of administrative law. In support, she has cited the following judgments:-

1. **Purshottam Lal Dhingra** Vs. **UOI**, AIR 1958 SC 36.
2. **Pancham Ram & Ors.** Vs. **U.P. Kal Nigam, Lucknow & Ors.,** 1999(1) ATJ-H.C. Allahabad 633.
3. **Mool Raj Upadhayaya** Vs. **State of Himachal Pradesh & Ors.,** 1994 (4) SCT-136.
4. **Mansha Ram & Ors.** Vs. **State of Himachal Pradesh & Ors.,** 2010(4) SCT-1.
5. **Oil & Natural Gas Commission Ltd.** Vs. **Engineering Mazdoor Sangh,** 2007(1)SCC (L&S) 157.
6. **Mayur Vithalbai Patel** Vs. **Secretary, Ministry of Labour and Employment**(5/2012 Swamynews-74 (Ahmedabad) decided on 10.06.2011.
7. **Gopinath Behara** Vs. **UOI & Ors.,** (7/2003-Swamynews-67)(Cuttack) decided on 02.01.2003.
8. **Sanjay Kumar Manjul** Vs. **Chairman, UPSC & Ors.,** 2006 SCC (L&S)-1780.
9. **Secretary, State of Karnataka** Vs. **Uma Devi**, 2006(3) SCC (L&S) 753 and many other judgments.

4. Hence, the applicant has sought the following reliefs:-

> "(a) That this Hon'ble Tribunal may graciously be pleased set-aside the order dt. 17.10.2010 and 20.10.2010, thereby artificially altering her service conditions illegally without any notice or providing opportunity of hearing (**Annexure A-1).**
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> (b) That her services may ordered to be continued uninterruptedly as framed by the General Officer Commanding, 1 Corps., for its Family Welfare Centre, vide its circular dt. 21.04.1986 (**Annexure A-2**), under whom she was initially appointed in April, 1999 (**Annexure A-2**).
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> (c) That this Hon'ble Tribunal may further be pleased to direct the Respondents to treat applicant as a Work-Charge Employee in consideration of her long continuous 15 years service and allow her benefits of service as per rules admissible to work-charge employee including her placement in the pay scale of the regular post of Ward-Shayika. Her absorption in regular post of Ward-Shyaka may kindly be considered before any individual junior to her is regularized in the post before ordering any fresh appointment in this post. This is in consonance with Hon'ble Supreme Court law laid down in the case of Mool Raj Upadhaya Vs. State of Himachal Pradesh and Ors. (**Annexure A-13**)."

5. In the counter, the respondents submit that the case of the applicant is hit by limitation and is liable to be dismissed on this ground alone. They submit that the service of the applicant was terminated w.e.f. 19.10.2010 vide Order No. 549/2/Polyclinic/PC/09 dt. 17.10.2010. The applicant was again appointed as part time attendant on ad hoc basis for a period of 11 months w.e.f. 21.10.2010 on fresh agreement contract vide order dated 20.10.2010. It is stated that the action of the respondents is as per law and no guidelines have been violated. In support of their action, respondents state that the applicant was employed on casual basis as per terms and conditions of her service. Her case is different from

that of Smt. Maya Devi Dhar as her service was continuous, whereas the present applicant, had a break in service. The Hon'ble Tribunal had also observed that the applicant was in continuous service since 1999 and not eligible for similar relief as granted to Smt. Maya Devi Dhar. The break in service for casual employee is based on administrative requirements. The applicant has been re-appointed only on humanitarian grounds and is presently drawing salary fulfilling the terms and conditions of the minimum wages scale for casuals. The ratio of judgments cited by the applicant is not applicable to the current case. In view of the same, it has been prayed that the O.A. be dismissed.

6. In rejoinder, the applicant states that her case is one of continuing nature in the context of the orders passed in the similarly situated case of one Smt. Maya Devi Dhar. Hence, her case is not hit by limitation. Both Smt. Maya Devi Dhar and the applicant were engaged by the respondents on similar service conditions. Hence, she should be given the same benefits as given to Smt. Maya Devi Dhar.

7. During the course of hearing, learned counsel for the applicant vehemently argued that the applicant has been discriminated against and that no government employee can be removed from service in Central or State, without adhering to the Constitutional

Safeguards provided under Article-311(1)(ii) of the Constitution. The action of the respondents giving break in continuous service is willful and arbitrary.

7.1 He also emphasized that the case is not hit by limitation. The applicant had filed the joint OA before this Tribunal as early as in 2008. Thereafter it became a recurring cause of action. The case of the applicant is squarely covered by the decision of the Apex Court in the case of **M.R. Gupta** Vs. **UOI & Ors.,** (1995) 5-SCC-628 wherein it has been held that point of limitation will not arise when it is established that there is a continuing wrong giving rise to the recurring cause of action.

7.2 Rebutting this contention, learned counsel for the respondents stated that even though MA for condonation of delay of 1514 days has been filed along with the OA, the same does not give any cogent or convincing reasons for the inordinate delay. The O.A. is liable to be dismissed on this ground alone. He further submitted that there is multiplicity of reliefs being claimed by the applicant, which is not permissible under the Administrative Tribunals Act, 1985. Coming to the impugned order dated 17.10.2010, the learned counsel stated that as per terms and conditions, the service contract of the applicant stood completed on 18.10.2010. Hence, her services were terminated w.e.f. 18.10.2010. The applicant voluntarily

accepted her engagement on ad hoc basis for a period of 11 months. It is incorrect for the applicant to state that she is not being paid Rs. 1800 per month. Para-1(a) of letter dated 20.10.2010 reads as follows:-

> "You will be paid a fixed honorarium @Rs.1800/- per month. No allowances of any kind are admissible since the engagement is purely temporary, adhoc and part time."

Subsequently, her payment was increased to Rs.2000/- per month and ultimately to Rs. 3000/- per month as shown in the annexed table at Annexure-R1.

8. On going through the facts of the case, I am inclined to agree with the contention of the respondents that the case of the applicant is horribly delayed. Though she had filed an OA along with the senior Smt. Maya Devi Dhar in the year 2008 but the fact remains that the Tribunal in its order dated 11.11.2008 held that the applicant was not eligible for similar relief as allowed to Smt. Maya Devi Dhar. The Tribunal, however, gave liberty to the applicant to prefer a representation for pressing her relief in accordance with Minimum Wages Act before the respondents.

9. Between 2008 till the time the present OA is filed, there is a yawning gap of seven years for which no justifiable reason for delay is forthcoming. Her grievance regarding artificial break in service arose in 2010. Yet she chose to remain silent and did not challenge

the impugned orders. It was only after Smt. Maya Devi Dhar won her case and was appointed to a regular post of Ward Shayika that the applicant represented for similar relief.

9.1 Hon'ble Supreme Court in **BSNL Vs. Ghanshyam Das & Ors**., reported in (2011) 4 SCC p.374, has held that the order of the Tribunal may not be treated as a judicial precedent for those who were sitting at the fence. Paras 25 and 26 of the judgment read as under :

> "25. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:
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> (a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
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> (b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
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> (c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and
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> (d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.
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> 26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others."

Hon'ble Apex Court in the case of **D.C.S. Negi** Vs. **Union of India & Ors.,** [Special Leave (Civil)CC No. 3709/2011) on 07.03.2011 (supra) has clearly held as under:

> "Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21. .....
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> Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21 (3)."

Furthermore, in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation & Another**, [(2010) 5 SCC 459], Hon'ble Supreme Court observed as under:

> "8.....The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

The ratio of the judgments cited by the applicant is different to the facts of the present case. It has also been informed by the

respondents that the applicant is already drawing the revised pay and emoluments as admissible to any other casual wage employee. No illegality seems to have been committed by the respondents as alleged by her. I, therefore, find that there is no merit in this case and the same is dismissed on limitation as well as on merit. No costs.

(Praveen Mahajan)
Member (A)

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