

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

OA-4129/2013

Reserved on : 12.01.2017.

Pronounced on : 07.02.2017.

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Mr. Shekhar Agarwal, Member (A)

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.

..... Applicant

(through Sh. Pradeep Kumar, Advocate)

Versus

1. Union of India
Through The Secretary,
Ministry of Communications & I.T.,
Department of Posts, Dak Bhawan,
New Delhi-110001.
2. The Chief Postmaster General,
Delhi Circle, Meghdoot Bhawan,
New Delhi-110001.
3. The Sr. Superintendent,
Delhi Sorting Division,
Delhi-110006.

.... Respondents

(through Sh. Ravi Kant Jain, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This O.A. was earlier allowed by our order dated 28.05.2015.
However, the respondents filed RA-185/2015, which was allowed by

us vide order dated 27.01.2016 and this O.A. was restored for fresh adjudication.

2. Brief facts of the case are that the applicant was appointed with the respondents as Part Time Farash w.e.f. 16.07.1980. She became Full Time Farash w.e.f. 01.06.1997 and was granted temporary status w.e.f 01.06.1998. On completion of three years of service, she was granted status at par with regular Group-D employees w.e.f. 01.06.2001. Thereafter, when the respondents issued their letter No. 66-9/91-SPB-I dated 30.11.1992, she was granted various facilities at par with regular Group-D employees, such as, leave, holidays, insurance, GPF, LTC & bonus etc. However, as far as retiral benefits were concerned, the aforesaid letter provided that pension and other retiral benefits would be payable to persons like the applicant only after their regularization.

2.1 After VIth CPC recommendations were accepted, the respondents issued O.M. No. 49011/31/2008-Estt.(C) dated 23.01.2012 regarding applicability of these recommendations to Group-D employees. The relevant part of the aforesaid O.M. is extracted below:-

“In supersession of this Department's OM of even number dated 12.9.2008 on the above subject it has been decided that the wages of Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 issued by this Department and were in receipt of wages based on the pre-revised S-1 scale as

on 1.1.2006, may be worked out and paid on the basis of Pay Band I with Grade Pay of Rs.1800/- w.e.f. 1.1.2006 provided they are matriculate. In case of similarly placed non matriculate temporary status Casual Labourers, the above benefit of wages w.e.f. 1.1.2006 may be extended only after imparting the requisite training by the respective administrative Ministries/Departments on the lines indicated in the MOF O.M. No.1/1/2008-IC dated 24.12.2008."

In pursuance of the said recommendations the applicant was ordered to undergo training during the period 19.03.2012 to 24.03.2012. According to her, she completed the training successfully, even then she was not regularized. She submitted several representations to the respondents seeking regularization. However, her request was rejected by the respondents vide the impugned order dated 10/11.07.2013. Hence, she has filed this O.A. seeking the following relief:-

- “(i) To quash the impugned orders dated 10/11.7.2013 & 17.9.2012 passed by the respondents (Annexures A-1 & A-2 respectively);
- (ii) To direct the respondents to regularise the applicant against a Group ‘D’ post/MTS Cadre post at least with effect from the date she was granted temporary status with all consequential benefits.
- (iii) To direct the respondents to grant all consequential benefits and pay all the retiral benefits w.e.f. the date of her superannuation i.e. 31.12.2012 as are admissible to a Group ‘D’ employees/MTS cadre employees viz., Gratuity, Pension, Provident Fund, Leave Encashment etc. and also issue necessary orders to provide her the CGHS facilities.
- (iv) To award the costs of this application.
- (v) To grant such other or further orders as this Hon’ble Tribunal may deem fit in the facts and circumstances of the case in the interest of justice.”

3. In their reply, the respondents have stated that the applicant was appointed as a Part Time Farash on 16.07.1980 and made Full Time Farash on 01.06.1997. She was granted temporary status w.e.f. 01.06.1998 and after completion of three years service, she was granted status at par with temporary Group-D employees w.e.f. 01.06.2001 with benefits admissible as per departmental letter dated 30.11.1992. The applicant had submitted an application on 16.08.2012 seeking regularization in the Multi Tasking Staff (MTS) cadre. This was disposed of vide letter dated 17.09.2012 in which she was intimated that as per rules, the casual labourers, who had been working since 01.09.1993 or earlier thereto for full 08 hours a day were to be given preference while making selection and given appointment on the basis of selection-cum-seniority. She was also informed that her position in the panel is at 4th place and she will be taken up for regularization in due course. However, on attaining the age of 60 years, her services were dispensed with w.e.f. 31.12.2012. She submitted another representation dated 15.05.2013 to CPMG, Delhi Circle praying for regularization w.e.f. the date she was granted temporary status and payment of all consequential benefits including retiral benefits. This was rejected on merits vide the letter dated 10/11.07.2013.

4. We have heard both sides and have perused the material placed on record. Learned counsel for the applicant argued that the applicant had spent more than 32 years with the respondents, yet she has not been granted retiral benefits by them. This was a result of carelessness of the respondents as vacancies were available for regularization prior to her retirement. The respondents informed her that she was at No.04 in the seniority list and 03 persons senior to her, namely, S/Sh. Ram Phool, Kewal Krishan Sharma and Brahmjit had not appeared for the interview and were not absorbed. Thus, it is clear that vacancies were available for absorption but the respondents did not consider her despite the fact that she was next in the list. The applicant has relied on the judgment of Bombay Bench of this Tribunal in **OA-403/2001** (Dinkar Shankarrao Gite Vs. UOI & Ors.) dated 29.11.2011.

4.1 Learned counsel for the applicant argued that it was a very hard case where for want of approval from the higher authorities, the applicant has not been regularized for almost 30 years. She has also relied on the judgment of Hon'ble Supreme Court in the case of **State of Gujarat & Ors. Vs. PWD Employees Union & Ors. etc.** [2013(3)SLJ 164 (SC)] wherein it was held that workers engaged as per rules for more than 05 years in the Forest Department were eligible for regularization. She has also submitted that Hon'ble

Supreme Court judgments in the case of **Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors.** [(2006) 4 SCC 1] and in the case of **State of Karnataka & Ors. Vs. M.L. Kesari & Ors.**, 2011(1)83 SC would also apply in this case. She has also sought benefit under the Gratuity Act.

4.2 Sh. R.K. Jain appearing for the respondents, on the other hand, argued that as per Instructions a common panel of part time workers and full time daily workers was prepared by the department. The seniority given in this was on the basis of date of engagement as full time worker. As far as part time workers were concerned, 50% benefit of service was given for the period for which they worked as part time. The respondents have enclosed at page-130 of the paper-book the seniority list of casual labourers so prepared. The applicant's name figures at No.04 position in the same. Sh. Jain further argued that a meeting of the departmental promotion committee was held on 26.08.2013 to consider the cases of casual labourers for recruitment as MTS. 04 persons, namely, S/Sh. Ram Phool, Kewal Krishan Sharma and Brahmjit and Smt. Indra were selected and were recruited in the MTS cadre vide order dated 27/29.08.2013.

4.3 We find that the subject of the aforesaid order is "Recruitment to the cadre of Multi Tasking Staff in Delhi Sorting Division of the year

2011". Thus, it is evident that the vacancies for which the aforesaid recruitment was made pertained to the year 2011. However, the departmental promotion committee was held on 26.08.2013. In between the applicant had superannuated on 31.12.2012. Had the DPC been held on time, the applicant would also have been considered and would have been regularized as she was at No.04 position in the seniority list and 04 persons were so regularized. It is evident that the applicant has suffered on account of administrative delays of the respondents themselves. In this respect her case is similar to the case of **Dinkar Shankarrao Gite** (supra) relied upon by the applicant wherein also finding that regularization was delayed by the respondents for several years for want of administrative approval, this Tribunal had granted relief to the applicant therein. However, in our opinion, the judgments of Apex Court in the case of **Uma Devi** (supra) and in the case of **M.L. Kesari** (supra) would not be of much help to the applicant since the respondents have contended that the applicant retired before her case for regularization could be considered in her turn.

5. Further, we notice that the respondents have violated the instructions of DoP&T regarding consideration of retired employees also in cases of delayed DPCs. In this regard, we have perused the DoP&T O.M. No. 22011/4/98-Estt.(D) dated 12.10.1998 wherein it is laid down that when DPCs are held after delay for vacancies

pertaining to previous years in which retired government servants were in service, then such retired government servants should also be considered. This, according to the O.M., is important for determining the correct zone of consideration. It is also provided that retired officials will have to be included in the panel but would have no right for actual promotion. The DPCs have been given liberty to prepare extended panels if required. In the instant case, we notice that the vacancies for which selection was held pertained to the year 2011 i.e. before retirement of the applicant. Hence, in accordance with these Instructions, the applicant should have been considered and should not have been rejected merely on the ground that she had retired.

5.1 Further, it is trite law that although a retired employee does not have any right to be promoted after his retirement, but if a junior is being promoted from a date prior to his retirement, then such retired employee also deserves to be promoted retrospectively.

5.2 In the present case, we find that by order dated 27/29.08.2013 the respondents have not only regularized the employees, whose names are contained in the order but have also recruited them to the cadre of MTS. Further, it is provided in the Instructions issued by Department on 12.04.1991 (pages 78-80 of the paper-book) that on regularization of casual labourers having temporary status, 50% of

their service rendered under temporary status would be counted for the purpose of retirement benefits. Thus, when employees are regularized effectively they get benefit of regularization with retrospective effect inasmuch as 50% of their temporary status service is counted as regular service.

5.3 In the instant case, we notice that 04 employees mentioned in the order dated 27/29.08.2013 are being recruited/promoted as MTS on regular basis. Since they have become regular because of this order, they will get benefit of regular service from a back date by counting 50% of their temporary status service. In the case of Smt. Indra, who is junior to the applicant, this would mean counting of 50% temporary status service w.e.f. 01.06.1998. In other words, her regular service will commence from a date prior to the date of retirement of the applicant on 31.12.2012. Since benefit of regular service is being given to a junior from a date before the date of retirement of the applicant, the applicant should also have been extended the same in terms of the settled law on the subject. Therefore, even if it is held that the applicant was not entitled to promotion since the same was granted to her junior after her retirement, regularization should have been granted to her after including her name in the panel.

6. We, therefore, allow this O.A. and direct the respondents to convene a meeting to review the minutes of the DPC held on 26.08.2013 in so far as the applicant is concerned in the light of the observations made above. In case the applicant is found fit, she will be given benefit of regularization at par with her junior Smt. Indra. She will also be entitled to consequential retiral benefits thereafter. The above benefits may be given to her within a period of 06 weeks from the date of receipt of a copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/