

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 210/00460/2014

Dated this Thursday, the 04th day of July, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R.N.SINGH, MEMBER (JUDICIAL)

- 1) Smt. Lata Satish Tumma, Age 49 years,
 W/o Late Satish Dattatraya Tumma,
 working as temporary status, casual labour,
 Railway Mail Service, Pune,
 Residing at Survey No.1183
 Adjacent Marcanteya Temple,
 Near Kamgar Maidan, Bhavani Peth,
 Pune 411 002.
- 2) Shri Prasad Satish Tumma, Age 24 years,
 S/o Late Satish Dattatraya Tumma,
 residing at Survey No.1183
 Adjacent Marcanteya Temple,
 Near Kamgar Maidan, Bhavani Peth,
 Pune 411 002. *Applicants*

*(By Advocate Shri Vishal Shirke proxy counsel
for Shri S.V. Marne)*

VERSUS

1. Union of India, Through the Chief Post Master General,
 Maharashtra Circle, GPO Mumbai, Pin Code 400 001.
2. The Post Master General, Pune Region, Pune 411 001.
3. The Superintendent Railway Mail Service,
 B' Division, Pune 411 001. *Respondents*

(By Advocate Shri V.S. Masurkar)

ORAL ORDER

Per : Shri R.N. Singh, Member (J)

Heard the learned counsels for the
 parties.

2. This OA has been filed under
 Section 19 of the Administrative Tribunals

Act, 1985 by Smt. Lata Satish Tumma (widow of late Shri Satish Dattatraya Tumma) and Shri Prasad Satish Tumma (the son of late Shri Satish D. Tumma). The applicants have prayed for the following reliefs :-

"8.a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quashed and set aside the impugned orders dated 31.10.2012 and 21.11.2013 with all consequential benefits.

8.b. This Hon'ble Tribunal may further be pleased to declare that Late Shri Satish Dattatray Tumma attained the status of regular Multi Tasking Staff w.e.f. 31.12.2002.

8.c. As a consequence of grant of declaration under prayer clause (b) above, this Hon'ble Tribunal may be pleased to direct the Respondents to pay to Applicant No.1 family pension and other pensionary benefits and to consider the case of Applicant No.2 for grant of compassionate appointment as per rules.

8.d. Cost of the application be provided for.

8.e. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

3. The precise facts leading to the present case are that late Shri Tumma was initially recruited as a causal labourer in Pune Division of Railway Mail Service under Postmaster General, Pune Region. Subsequently, late Shri Tumma was granted temporary status with effect from

01.08.1999. Late Shri Tumma thereafter requested the respondents for regularization of his service against a Group 'D' post but it was rejected by the respondents vide their order dated 28.05.2009.

4. Aggrieved of the order dated 28.05.2009 passed by the respondents, late Shri Tumma approached this Tribunal vide OA No.764/2009. Along with other OAs, it was disposed of by a common order / judgment dated 28.09.2010. The paragraphs Nos.17 and 18 of the order / judgment dated 28.09.2010 read as under ;-

"17. In view of the above discussion of law and fact, the respondents are directed to consider the case of the 21 seniormost causal labourers for regularization of their services in Pune RMS Division w.e.f. 31.12.2002 as per Rules. The respondents are also directed to consider the cases of next 15 casual labourers in the seniority list for regularization against the existing 15 vacancies with prospective effect as per Rules. The respondents shall comply with the above direction within a period of six months from the date of receipt of a copy of this order. So far as the cases of the remaining 14 applicants are concerned, it would indeed be appropriate under the facts and circumstances and in law to direct the respondents to consider their cases in due turn for regularization against Group 'D' posts as and when future vacancies come up commensurate with the quota of 25% applicable in their cases. There shall be no order as to costs.

18. Accordingly, all the O.As. stand allowed in

terms of above directions. There shall be no order as to costs. Issue Dasti Copy."

5. The learned counsel for the applicant submits that late Shri Tumma was one of the 15 casual labourers in the seniority list for regularization, referred to paragraph No.17 of the order / judgment dated 28.09.2010.

6. In response to the notice from this Tribunal, the respondents have filed written statement submitting that the OA is barred by delay and laches of more than 12 years and therefore, keeping in view the law laid down by the Hon'ble Apex Court in catena of cases, the OA is not maintainable. The respondents have referred to those judgments of the Hon'ble Supreme Court as well as Full Bench of this Tribunal in paragraph No.8 of their such written statement -

"(i) P.S.Sadasivaswamy V/S S/O Tamil Nadu AIR 1974 SC 2271.

(ii). Jacob Abraham and others A.T. Full Bench Judgments, 1994-96.

(iii). Ram Chandra Samanta V/S UOI 1994 (26) AC 228.

(iv). *S.S.Rathore V/S S/O M.P. 1989 (2) ATC 521.*

(v). *Bhoop Singh V/S UOI IR 1992 SC 1414.*

(vi). *Secretary to Govt. of India V/S Shivaram M. Gaikwad (1995) 30 ATC 635 = 1995 (6) SLR (SC) 812.*

(vii). *Ex. Capt. Harish Uppal V/S UOI 1994 (2) SLJ 177.*

(viii). *L. Chandra Kumar V/S UOI 1997 (2) SLR (SC) 1.*

(ix). *AIR 199 SC 564 Dattaram V/S Union of India.*

(x). *1996 LLJ 1127 (SC) UOI V/S Bhagnoar Singh.*

(1999) 8 SCC 304 Ramesh Chand Sharma V/S Udhamb Singh Kamal & Ors.

(xi). 2002 (5) SLR (SC) 307 E. Parmasivan & Ors. VS UOI & Ors."

7. The respondents further rely upon the law laid down by the Hon'ble Apex Court in the case of *Union of India vs. M.K. Sarkar, (2010) 1 SCC (L&S) 1126* and

contend that the issue of limitation or delay and laches has to be considered with reference to original cause of action and not with reference to date on which an order is passed in compliance with a court's direction.

8. The learned counsel for the respondents further refers and relies on the judgment of the Hon'ble Apex Court in

the case of *State of Uttarakhand Vs. Shiv Charan Singh*, 2013 ALL SCR 3211 and contends that the relief must be claimed within reasonable time and claim after two decades should not have been entertained by the Tribunal and accepted by the High Court.

9. Further in paragraph No.14 of the written statement, the respondents submit that the cases of the temporary status casual labourers (both senior and junior to Shri Tumma) were considered by the DPC for regularization of their services with effect from the issue of their posting orders i.e. 25.09.2012. However, the case of Shri Tumma could not be considered by the DPC on that date for appointment as Multi Tasking Staff as he had already expired on 30.07.2011 and was not alive on the date of holding of the DPC on 25.09.2012 for filling up the vacancies for the year 2012.

10. Later on, the applicant No.1 i.e. the widow of late Shri Tumma vide her application dated 21.09.2011 requested for

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compassionate appointment for her son.

Since late Shri Tumma was only a temporary status casual labourer at the time of his death, in absence of any provision in the Rules for compassionate appointments in respect of temporary status casual labourers, the respondents replied vide their letter dated 19/20.06.2012 accordingly. The applicant No.1, however, approached the office of the Post Master General, Pune vide her application dated 08.10.2013, which was also replied vide letter dated 21.11.2013.

11. We have perused the pleadings on record and have also considered the submissions made on behalf of the parties. From the aforesaid, it is not in dispute that this Tribunal directed the respondents vide order dated 28.09.2010 to consider cases of the next 15 causal labourers in the seniority list for regularization against the existing vacancies with prospective effect as per the rules.

12. In compliance of such direction to the respondents, the respondents have

considered those 14 out of 15 temporary status causal labourers on 25.09.2012.

However, in view of prior death of late Shri Tumma on 30.07.2011, his case could not be considered.

13. Besides, the request of the applicant for grant of compassionate appointment has been considered by the respondents and in absence of any provision for considering the family members of the deceased casual labourers with temporary status for compassionate appointments, the request of the applicant could not be acceded by the respondents and the applicant was informed accordingly vide their communication dated 19/20.06.2012 and 21.11.2013. Fact of communication of these orders is not in dispute, though are under challenge in the present O.A.

14. Once in the first round of litigation, it was directed to consider the case of late Shri Tumma for regularization against the existing vacancies with retrospective effect by order / judgment dated 28.09.2010, the prayer of the

applicant in the O.A. for declaration that late Shri Tumma attained the status of regular Multi Tasking Staff with effect from 31.12.2002 is not maintainable. As such the applicants are not found entitled for the reliefs as sought in paragraph No.8 of the OA for compassionate employment and pension and pensionary benefits.

15. The learned counsel for the applicant has not been able to show any provision under which the claim of the family of a deceased temporary status casual labourer can be considered for grant of compassionate appointment and pension / pensionary benefits, we do not find any error in the impugned orders of the respondents dated 31.10.2013 and 21.11.2013.

16. In view of the above, OA is devoid of any merit and accordingly, it is dismissed but no costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai) /
Member(Administrative)

*kmg**

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