

Central Administrative Tribunal
Principal Bench

(2)

R.A.No.63/2003 in O.A.No.3203/2002
with
R.A.No.75/2003 in O.A.No.47/2003

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 3rd day of April, 2003

R.A.No.63/2003 in O.A.No.3203/2002

1. Pintoo Kumar
S/o Sh. Dharamvir Sharma
R/o Village Dunda Hera
P.O. Khekra, Tehsil Khekra
Distt. Bagpat
(U.P.)
2. Mahesh Singh
S/o Sh. Prithvi Singh
R/o H.No.115, Gali No.2
Shanti Marg, Mandawli Fazalpur
Delhi.
3. Sh. Gulab Singh
S/o Sh. Kalyan Singh
R/o H.No.348, Block-E
Shakur Pur, Anand Vas
Delhi - 110 034.
4. Sh. Ombir Singh
S/o Sh. Sardara
R/o Back Side of H.No.2
Gali No.1, Amar Colony
East Gokul Pur
Delhi - 110 094.
5. Dinesh Kumar Saini
S/o Sh. Des Raj Saini
R/o H.No. 129, Village Lampur
P.O.Narela, Delhi - 110 040. -Applicants

(By Advocate Shri S.K. Gupta)

-Versus-

1. Union of India
through Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Secretary
Ministry of Personnel & Training
Dept. of Personnel & Training
North Block, New Delhi.
3. Secretary
Liberhan Ayodhya Commission of Enquiry
(Ministry of Home Affairs)
Vigyan Bhawan Annex
New Delhi - 110 011. -Respondents

(By Advocate Ms. Rinchen O. Bhutia)

Km. Bimla Rani,
44/1104, DDA Flats,
Kalkaji,
New Delhi.

(PB)
-Applicant

(By Advocate Shri Deepak Verma)

-Versus-

1. Union of India
through Secretary
Ministry of Home Affairs
North Block, New Delhi.

2. Secretary
Ministry of Personnel & Training
Dept. of Personnel & Training
North Block, New Delhi.

3. Secretary
Liberhan Ayodhya Commission of Inquiry
(Ministry of Home Affairs)
Vigyan Bhawan Annex
New Delhi - 110 011.

... -Respondents

(By Advocate: Mrs. Rinchen O. Bhutia)

O R D E R

By Shri Shanker Raju, M(J):

Both the aforesaid review applications arising out of an identical question of law and facts, the same are disposed of by this common order.

2. Applicants, in both these OAs, who had been engaged temporarily on contractual basis, in Liberhan Ayodhya Commission of Inquiry (hereinafter called as "LACI") had continued since 1994 by extension of their contract from time to time. They have sought directions for their regular absorption, which has been rejected in the light of the decision of Apex Court in Rajender v. State of Rajasthan, 1999 (2) SCC 317. By an order dated 21.2.2003, this Tribunal held that as the employment of the applicants were co-terminus with the Commission, and as the same is in the process, there is no infirmity in dispensing of services of applicants.

3. RA 63/2003 filed in OA 3203/2002, after issuance of notice, reply has been filed by respondents whereas RA 75/2003 in OA 47/2003 has been listed today, notices have been received by Mrs. Rinchen O. Bhutia, who adopts her reply filed in RA 63/2003 in OA 3203/2002 as well. As Shri Deepak Verma appeared for the review applicant in RA 75/2003 adopts the arguments adduced by Shri S.K.Gupta in RA 63/2003 in OA 3203-/2003.

4. Shri S.K.Gupta, in his review, contended that in view of the notification issued by the Government on 27.12.2002, extending the term of LACI upto 30.6.2003, the aforesaid term may also likely to be extended and applicants have right to continue in service upto to the life of Commission and on this it is contended that there is an error apparent on the face of record.

5. Shri Gupta placing reliance on a decision of Apex Court in Central Welfare Board & Ors. v. Ms. Anjali Bepari & Ors., JT 1996(8) SC 1 contended that in such a situation, on the basis of "last come first go", the petitioner therein had been directed to be regularised in order of seniority, and this direction pertains to any other available Scheme as well.

6. In this view of the matter, it is stated that as the Commission is not winding up applicants be allowed to work till the life of the Commission.

7. On the other hand, respondents' counsel Mrs. Rinchen O. Bhutia placing reliance on the decision of High Court in Amit Yadav & Ors. v. DVB, 2000(4) SLR 236 contended that one has no right to continue beyond the contractual period, which is for a fixed period, and the right to continue would come to

8. Further placing reliance on a decision of Calcutta High Court in Devender Prasad Singh v. Union of India & Ors, 1998(4) SLR 197, it is contended that it is not obligatory upon the respondents to renew the contract which had expired on afflux of time.

9. Moreover, ~~as~~ ^u preliminary objection, it is stated that the review is not within the purview of Section 23(f) of the Administrative Tribunals Act, 1985 - inasmuch as applicants have not established that the aforesaid notification was a discovery of new important matter of evidence which even after due diligence was not in possession of applicants and they had no knowledge about it. Moreover, placing reliance on a decision of the Ernakulam Bench of this Tribunal in G.K.Mavi v. Union of India, 1995(3) SLR, it is contended that despite availability of opportunity to raise the issue, which was in the knowledge of applicants, the same cannot be allowed to be raised in a review application.

10. It is stated that there is no error apparent on the face of record as although the Commission's tenure has been extended till 30.6.2003 but yet the work is not available and the earlier sanctioned strength of employees was 58, which has now been reduced to 35, and the Commission has almost completed the work and as the services of applicants are not required, the same have been dispensed with as per the expiry of their contract. However, it is reiterated that the Commission is not replacing the petitioners by engaging any persons on ad hoc from open market.

11. I have carefully considered the rival contentions of the parties and perused the material on record. Apex Court in Ajit Kumar Pandy v. State of Rajasthan, 1999(9) SCC 596 observed as under:

"Power of review available to an Administrative Tribunal is the same as has been given to a court under S.114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order-47. The power can be exercised on the application of a person, on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be sought merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. The expression "any other sufficient reason" used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule. (Para 30)

Any attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."

12. Moreover, an error apparent on the face of record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may be two conceivable opinions as held by Apex Court in Meera Bhania v. Nirmala Kumari Choudhury, AIR 1995 SC 455.

13. In this view of the matter and having regard to the aforesaid ratio, I am of the considered view that there does not exist any error apparent on the face of record to warrant any judicial interference.

14. In so far as the discovery of new material is concerned, the aforesaid notification has been issued and Gazetted and Published on 27.12.2002, there is nothing on record to justify and no relevant reasons have come forth to establish that despite diligence the new material could not be procured, and the same was within the knowledge of the applicants. The aforesaid notification available to them right from 27.12.2002 but yet the same has not been tendered before this Court.

15. In so far as the merit is concerned, it is an established principle of law that in a review one cannot be allowed to re-argue the matter and it must be remembered that this Court cannot *act as an appellate forum.*

16. The resort of applicants to Anjali Bepari's case (supra) is unfounded as therein the employees were engaged on casual basis. Whereas, in the present case, applicants have been engaged on contract basis and this contract was co-terminus with the life of the Commission. As such the same is distinguishable and would not apply to the facts and circumstances of the present case.

17. In so far as the life of the Commission is concerned, the same is to be judged in the light of the availability of work and the work performed by the applicants. As most of the proceedings have concluded and the inquiry report is to be submitted by Commission, the work performed by applicants is no more required, accordingly, the sanctioned strength has been reduced from 58 to 35.

18. The contractual employee or an employee working on contract for a fixed period, cannot claim his right for continuance on expiry of contract and afflux of the period prescribed for such a contract. The decision of Delhi High Court in Amit Yadav's case (supra), in all fours, applies to the present case.

19. In my considered view, when the applicants have no right for regularisation, the Commission is time bound and the employment is co-terminus with it, as the services of applicants are no more required, they cannot insist upon their continuance which would be de hors the rules and decision of the Apex Court.

20. In the result, for the foregoing reasons, both the aforesaid RAs are bereft of merit and are accordingly dismissed but without any order as to costs.

(Shanker Raju)
Member(J)

Anuradha
Dnyaneshwar
B. K. JUNEJA
Section/Court Officer
Central Administrative Tribunal
Principatl Bench, New Delhi
31/10/03