
(2020) 03 CAT CK 0024

In the Central Administrative Tribunal

Case No : Contempt Petition No. 771 Of 2017 In Original Application No. 4129 Of 2013

Sheela Devi

APPELLANT

Vs

A.N.Nanda And Others

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Citation : (2020) 03 CAT CK 0024

Hon'ble Judges : Vijay Lakshmi, Member (J); Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Pradeep Kumar, R.K.Jain

Final Decision : Disposed Of

Judgement

Pradeep Kumar, Member (A)

1. Applicant preferred this OA which was decided vide order dated 28.05.2015. Following directions were given:

"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 respondents in OA, felt aggrieved and preferred review vide RA No.185/2015. This was decided vide order dated 27.01.2016. Following order was passed:

"3.1 xxx xxx xxx

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."

3. Accordingly, OA was restored for fresh adjudication. This was decided vide order dated 07.02.2017. Following order was passed:

"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 6 weeks from the date of receipt of a copy of this order. No costs."

4. Alleging non-compliance, applicant preferred CP No.771/2017 which was closed vide orders dated 21.12.2017 which read as under:

"When this matter is taken up for hearing, the learned counsel for the respondents, while producing the status report, submitted that the Hon'ble High Court in WPC No. 9909/2017 stayed the operation of the orders of this Tribunal till the next date of hearing.

2. In the circumstances, the CP is closed and notices are discharged. However, the petitioner is at liberty to avail her remedies, in accordance with law, once the stay is vacated or the WPC is finally decided."

5. The Writ Petition referred above was preferred by respondent department against the order by Tribunal (para 3 supra) and this writ was dismissed vide order dated 16.08.2018. Following order was passed:

"11. In view of the above discussion, we find no infirmity in the impugned order that would deserve interference in judicial review. The respondent was entitled to be considered by the DPC against the vacancies of the year 2011, having rendered service in the Department for over 32 years and being at Sr.No.4 of the seniority list drawn by the Department. Further, a person junior to her was encadred in the MTS by the petitioner by overlooking the rightful claim of the respondent on a specious plea that she had superannuated by the date the DPC was conducted, without offering any cogent reason for the delay in convening the DPC on time.

12. Accordingly, the present petition is dismissed. The petitioners are directed to implement the impugned order within eight weeks from today and release the arrears of the retiral benefits to the respondent with all the consequential benefits within the same timeline. Parties are left to bear their own expenses."

6. Applicant had now preferred MA No.615/2019 seeking to revive the CP No.771/2017. The CP was restored vide order dated 15.02.2019. The respondents submitted status report on 16.05.2019 wherein a copy of office order dated 19.03.2019 was enclosed. This order indicates that as directed by Tribunal (para 3 supra), a review DPC was held and the applicant was appointed as MTS against the vacancy of the year 2011, in the pay scale of Rs.5200-20200 + GP Rs.1800 w.e.f. 01.01.2011. Thereafter, the applicant had superannuated on 31.12.2012.

7. As per calculations, the temporary service w.e.f. 01.06.1998 to 31.12.2000

has been given 50% weightage and regular service w.e.f. 01.11.2011 given 100% weightage. The qualifying service works to 8 years 3 months and 1 day and thus not eligible for pension being less than 10 years. She also pleads that CGHS facility has not been given to her.

8. Applicant is aggrieved at this calculation and wants her earlier service from 16.07.1980 to 31.05.1998 also counted. Reliance is placed on direction by Tribunal at para 1 above.

9. Per contra, respondents opposed the contentions. It was pleaded that the judgment in para 1 above was in the context of erroneous assumptions which were noted by Tribunal as brought out in para 2 above and review was allowed. Thereafter OA was heard afresh. Accordingly, it is the direction in para 3 above which is to be referred for compliance. Earlier observation/judgment is of no relevance. This has since been complied with vide orders dated 19.03.2019. Nothing subsist now.

10. Further, it was brought out that applicant was initially engaged on casual basis as Farash on part time basis on 16.07.1980. She continued as such until 31.05.1997. She was engaged as full time casual Farash w.e.f. 01.06.1997 to 31.05.1998 and was granted temporary status w.e.f. 01.06.1998. The calculation of qualifying service has accordingly been done counting the period w.e.f. 01.06.1998 onwards giving weightage as per instructions in force. In this connection, reliance was placed on letter dated 22.07.2016.

11. In regard to CGHS facility, it was pleaded that she needs to contact CGHS authority.

12. Accordingly, the CP is now required to be closed.

13. Applicant pleaded that as MTS, she ought to have been given the pay scale of Rs.5200-20200 + GP Rs.1900 as was given to one Sh. Virender Pal, who was posted as MTS in Foreign Post Wing in place of GP Rs.1800.

Further, she ought to have been treated at par with regular Group-D employees on completion of three year service with grant of temporary status i.e. w.e.f. 01.06.2001 in terms of policy circular dated 12.04.1991. This was reconfirmed also vide circular dated 30.11.1992. In accordance with this circular she is entitled to count her service for pension w.e.f. 01.06.2001. The relevant part of this circular dated 30.11.1992 reads as under:

"Counting of service for the purpose of Pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regularisation."

14. The applicant relies upon a judgment by Hon'ble High Court of Delhi in WP (C) No.5706/2002 dated 08.02.2017 (Union of India vs. CAT and another). In

this case Tribunal has allowed an OA No.2559/2001 vide order dated 22.04.2002 by one Sh. Zile Singh who was working as casual labour in Department of Post. Feeling aggrieved, the department had preferred the writ. The Hon'ble High Court had upheld the order by Tribunal. This judgment appears to be in the context of grant of bonus to such temporary employees who on completion of three years were treated at par with temporary Group-D employees of Department of Post in terms of circular dated 12.04.1991 and which was reconfirmed vide order dated 30.11.1992.

The applicant pleaded that provisions of pension are also covered in this very circular dated 30.11.1992 and are reproduced in para 13 above and in the judgment by Hon'ble High Court of Delhi in WP (C) No.5706/2002.

15. The applicant also relies upon another judgment by Hon'ble High Court of Delhi in WP (C) No.5907/2017, WP (C) No.1767/2018 and WP (C) No.3565/2019 by a common order dated 06.01.2020. It is pleaded that pensionary benefits were allowed to such temporary status employees and their families who had completed three years of service but who could not be regularised and they unfortunately expired. The Hon'ble High Court ruled as under:

"33. While the Respondents in WP(C) No. 5907/2017 and 1767/2018 would be entitled to the reliefs as granted by the CAT including family pension, the arrears are confined to a period of three years prior to their filing their respective OAs before the CAT. The impugned orders of the CAT in their respective OAs stand modified accordingly. As far as Sunder Singh is concerned, he has served the full pensionable service and his petition before the CAT was also not belated. Therefore, in his case the impugned order of the CAT is affirmed as such.

34. The consequential orders be passed by the Petitioners and this order be implemented not later than twelve weeks from today failing which the Petitioners would be liable to pay each of the Respondents 6% simple interest p.a. on the sums due for the period of delay.

35. The petitions and applications are disposed of in the above terms with costs of Rs.10,000/- in each petition to be paid by the Petitioners to the Respondents within twelve weeks."

16. The applicant pleaded that CP needs to be revived as the respondents had not complied with the directions.

17. The matter has been heard at length. Sh. Pradeep Kumar, learned counsel represented the applicant and Sh. R.K.Jain, learned counsel represented the respondents.

18. In regard to pay scale with GP Rs.1900/-, respondents have brought out that this was applicable in Foreign Post Wing and not other wings. The other wings had GP Rs.1800/- only, which was granted to the applicant. There were no specific directions to grant a particular GP. This contention was not seriously rebutted by applicant except for pleading that as MTS she ought to have been

given GP Rs.1900/- as the applicable scale.

In the face of factual matrix that MTS in other Wings had a pay scale of GP Rs.1800/-, the contentions by applicant are not accepted.

19. The reference point in contempt petition is with reference to the order passed (para-3 supra) and the compliance reported (para-6 supra). Directions were in respect of regularization. There were no directions in respect of any specific Grade Pay. Regularisation has since been done in the applicable Grade Pay of Rs.1800. Tribunal finds that there is substantial compliance. Hence there is no case for contempt. Accordingly, the Contempt Petition is closed and the notices are discharged. No costs.

20. However, since the applicant has brought out certain discrepancies in calculations of qualifying service vis-a-vis policy circular dated 30.11.1992 and certain relied upon judgments and non-grant of CGHS, she has liberty to file a fresh OA in accordance with law, if she is so advised.