
(2020) 09 JH CK 0035
In the Jharkhand High Court
Case No : Writ Petition(S) No. 6036 Of 2014

Union Of India And Ors

APPELLANT

Vs

Tarani Sen Lenka

RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

Administrative Tribunal Act, 1985 — Section 19, 22(3(f))
Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2020) 09 JH CK 0035

Hon'ble Judges : Aparesh Kumar Singh, J; Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Nitu Sinha, Rahul Kumar Das

Final Decision : Allowed

Judgement

1. Heard Mrs. Nitu Sinha, learned Central Government Counsel representing the petitioner Union of India and learned counsel Mr. Rahul Kumar Das representing the applicant / private respondent herein.

2. The learned Central Administrative Tribunal, Patna Bench at Ranchi after considering the rival stand of the parties passed the order at Annexure-3 dated 29.03.2012 in O.A. No. 237 of 2010 which reads as under:

"In the instant OA the applicant has sought for benefit of judgment rendered by CAT, Principal Bench in OA No. 804 of 1998, Hari Ram Shukla and others vs. Union of India & Others and OA No. 2634 of 2004, Phool Chand vs. Union of India & Others decided by the Principal Bench on 14.07.2005.

The point for consideration is whether the applicant is similarly situated to the applicants of OA 804 of 1998 and OA 2634 of 2004 and whether he is entitled to the same benefits.

2. It is also noticed that the impugned order dated 21.10.2010 [Annexure- A/8] is in reply to the application dated 08.09.2010 which reads as follows: "It is

intimated by HQCEJZ, Jabalpur vide their letter No. 110 1/ACP/211/FIB dated 09th August, 2010 that only the affected applicant of the OA No. 804/1998 are eligible in the skilled grade pay merely sympathy only. This is not as existing policy applicable to all C/Man [Blind]. Hence, your application dated 08th September, 2010 and certificates are returned herewith."

It is noticed that on 08.09.2010[Annexure-A/7], the applicant in OA No. 237 of 2010 had prayed before the Chief Engineer, Central Command, Lucknow as follows:

"1. That Sir, Engineer-in-Chief Branch had issued a letter No. 9523/438/Policy/EIC [legal-D] dated 15th Jul. 2008 [Copy enclosed] for the totally visually handicapped [Blind] C/Man to upgrade them from semi skilled to skilled based on the decision of Supreme Court but it is regretted that the said order has not so far been implemented by Garrison Engineer Ranchi.

2. That Sir, I have been approaching to the authorities since long to take proper action for my up-gradation and fixation of my pay scale of skilled category but unfortunately, no action has been taken in this regard.

3. I have come to know that all the visually [Blind] handicapped C/Men serving under other Commands have already been upgraded from semi skilled to skilled on account of the above mentioned letter and they are getting the skilled pay wherever I have not been considered for the same so far. Therefore, I request your honour to be kind enough to issue necessary direction in this regard for lower formation to implement the said order and to consider my up-gradation.

In this regard, the following certificates are submitted herewith for your verification and necessary action please:

[a] Certificate issued by Govt. of India, Department of Social Welfare, Training centre for the Adult Blind, Rajpur Road Dehradun.

[b] Certificate issued by "The Pheroze and Noshir Merewanji Re- habitation Centre for Blind, East View, Mount Abu, Ranjasthan."

3. It also appears from the communication dated 15.07.2008 [Annexure- A/4] the opinion of the Director [Legal] is expressed in the following words:

"It may be noted that Caneman who is not visually handicapped is not entitled to skilled grade of pay being not similarly situated to other visually handicapped Canemen. If any of Caneman [not visually handicapped] serving under your control, files an OA/CWP seeking skilled grade, strength from the above judgment dated 09th April, 2008 be extracted for defending such case in the Govt. interest."

In the written statement the respondent have stated as follows:

4. The applicant had applied for pay scale of skilled category being a visually (Blind) handicapped. His case was forwarded to HQ CWE Ranchi vide our letter

no. 1648/46/EIA[B] dated 16th June, 2010. Further HQ CWE Ranchi forwarded his application to HQ CE JZ Jabalpur vide their letter no. 10588/ACPS/1708/EIC [2] dated 26th June, 2010. HQ CE JZ Jabalpur further asked to forward certain documents/policy letter from HQ CWE Ranchi with copy to this office. Further this office submitted required documents/papers to HQ CWE Ranchi vide our letter no. 1648/56/EIA [B] dated 21st August, 2010 and HQ CWE Ranchi forwarded copy of HQ CE JZ Jabalpur letter no. 11071/ACP/211/EIB dated 09 August, 2010 vide their letter no. 10588/ACP/1721/EIC[2] dated 20th September, 2010. As per E-in-C's Br. Letter dated 15th July, 2008 mentioned in HQ CE JZ Jabalpur individual is not entitled for ACP of skilled Cat. The policy/instruction received from higher Hqr. Has been communicated to the individual through BSO vide letter No. 1027/ACP/23/EIA dated 28th September, 2010.

5. It is not the case of the respondents that the benefit of OA 804 of 1998 or OA 2634 of 2004 was directed not to be a precedent for other similarly situated Caneman or it was especially restricted to the applicants therein. It is also not their submission that the aforesaid judgments/orders were set aside or modified higher up. It is also not in dispute that the applicants are visually handicapped Caneman. Thus, in view of the reliefs granted to the visually handicapped Caneman under the Ministry of Defence by coordinate Benches, in OA No. 2034 of 2004 and OA No. 804 of 1998 the applicants are entitled to the same benefits as given to such applicants.

6. The impugned order dated 21st October, 2010 [Annexure-A/8] tends to create a class within a class and a macro compartmentalization on the basis of a micro distinction, which is bad in law. Even on the principle of equal pay for equal work, the applicant deserves consideration. As such, the impugned order being bereft of reasons is quashed.

7. The respondents are directed to grant the same benefits to the applicant as granted to their counterparts in OA No. 804 of 1998 and OA 2634 of 2004 with consequential benefits of proforma fixation if otherwise found eligible. However, actual benefits granted from the date of this order.

8. The OA is accordingly disposed of with no order as to costs."

This order was not challenged by the applicant/ respondent before the High Court under Article 226 of the Constitution of India, instead he preferred a review application being R.A. No. 04 of 2012 with the plea that the learned Tribunal did not confer him the benefit of pay scale of skilled grade from the initial date of joining in terms of the order passed in O.A. No. 3998 of 2010 by the learned CAT, Principal Bench, Delhi. Three grounds were pleaded by the applicant before the learned Tribunal which are:

a) that the order passed by the Hon'ble Tribunal had not taken into consideration the order passed in O.A. No. 3998/2010 dated 11.10.2011 passed by learned CAT, Principal Bench, New Delhi.

b) that the learned Tribunal has not taken into consideration the fact that similarly situated persons have been granted the skilled grade from the date of their joining in service.

c) That learned Tribunal has failed to fix a time frame for compliance of the order.

3. The instant writ petition arises out of the order dated 31.12.2012 passed in R.A. No. 04 of 2012, whereunder the learned CAT has modified the original order granting benefit of the pay scale of skilled grade to the applicant from the date of initial engagement with consequential benefits to be paid within 4 months. The review order (Annexure-5) reads as under:

"The review of the order dated 29.03.2012 in OA No. 237 of 2010[R] is sought for on the ground as follows:

That Hon'ble Tribunal vide order dated 29.03.2012 allowed the application of the applicant directing the respondents to grant the same benefit to the applicant as has been given to his counterparts in OA No. 804 of 1998 and OA No. 2634 of 2004. However, Hon'ble Tribunal did not confer the benefit to the applicant from the date of his joining in terms of the order passed in OA No. 3998 of 2010 by the Central Administrative Tribunal, Principal Bench, New Delhi. Further, the order does not specify the time frame in which the order passed by the Hon'ble Tribunal is to be complied with.

2. As I go through the orders in OA 804 of 1998 and OA 2634 of 2004, I find that the orders have been passed granting benefits from the date of initial engagement.

3. I also find that in a similar matter being OA No. 1832/2007 decided on 17.03.2008 and OA No.2697 of 2003 decided on 05.05.2004, the benefits have been granted from the date of initial engagement.

4. Hence, in the interest of justice and to mete out the invidious discrimination amongst the peers in the same post, the order is modified to the extent that the benefits of pay scale of skilled grade shall be granted to the applicant from the date of initial engagement to the post of Caneman with consequential benefits within four months from the date of communication of this order."

4. In the Original Application under Section 19 of the Administrative Tribunal Act, 1985 at Annexure-1 to the writ petition, the applicant pleaded that he being blind man appointed on the post of Cane weaver on 11.03.1985 which required a minimum qualification of Matriculation. He was however a Graduate but was treated under Semi Skilled category. He referred to the order passed in O.A. No. 804 of 1998 preferred by 20 visually handicapped Canemen (Annexure-3 to the OA) and also relied upon the notification dated 15.07.2008 of the Ministry of Defence (Annexure-4 to OA) in support of his submission that visually handicapped Canemen were granted scale of Skilled Grade. Though he made reference to the order passed in O.A. No. 13 of 2007 but the said order was not enclosed instead a letter dated 19.10.2010 of the Ministry of Defence(Army) was

enclosed as Annexure-5 to the OA. The order passed in O.A. No. 2634 of 2004 also was not enclosed to the O.A. Learned Tribunal after consider the case of the parties chose to grant relief to the applicant on similar line as in O.A. No. 804 of 1998 and O.A. No. 2634 of 2004. The order passed in O.A. No. 804 of 1998 has been placed before us by the learned counsel for the Union of India but it does not disclose that relief was granted from the initial date of joining. The order passed in O.A. No. 2634 of 2004 has neither been placed on record before the learned Tribunal in the applicant's Original Application nor in the review application as it appear from the pleadings of the review application enclosed as Annexure-4. It has not been annexed to the present writ petition.

5. A perusal of the order passed in review shows that the learned Tribunal was guided by an order passed in O.A. No. 3998 of 2010, which conferred the benefit to the said applicant from the date of joining. It appears further from para 2 of the impugned order that the learned Tribunal erroneously recorded that in O.A. No. 804 of 1998 relief was granted from the date of initial engagement to the applicants. It is being noticed that the order passed in O.A. No. 2634 of 2004 is not there anywhere in the pleadings before the learned CAT or before us. Learned Tribunal further went on to rely upon the order passed in 1832 of 2007 dated 17.03.2010 and O.A. No. 2697 of 2008 dated 5.05.2004 where, as per the Tribunal the benefits were granted from the date of initial engagement. These orders were also not on record before the learned Tribunal and are not before this court as it appears from the pleadings on record in the writ petition. However, inspite of the fact the applicant did not produce these orders at the time of decision of the original application nor pleaded that they could not be discovered with ordinary diligence when the original application was being decided, learned Tribunal in exercise of review jurisdiction proceeded to extend the relief granted in the original application.

6. The case has essentially been argued on the scope of review by the Union of India. Mrs. Nitu Sinha, learned Central Government Counsel has referred to the decision of the Hon'ble Jammu & Kashmir High Court at Srinagar in SWP No. 1698 of 2012 dated 18.10.2012 (part of Annexure-7). She has pointed out to the findings of the Learned Court, specifically at para 5 and 6 where despite such claim, relief was restricted to a period of 18 months preceding the date of filing of the original application to the applicant / respondent therein seeking the pay scale of skilled Grade being in visually handicapped semiskilled cadre of Canemen. This order has been upheld by the Apex Court in Special Leave to Appeal (C) No. 24521 of 2013, judgement dated 14.08.2014 where under the applicant's challenge was dismissed in limine. Learned counsel for the Union of India submits that the learned Tribunal fell in grave error in expanding this relief despite the fact that there was no error apparent on the face of record in the order passed in original application. The power of review is a creature of statute. Learned CAT has been conferred that power under Section 22(3)(f) of the Administrative Tribunal Act, 1985, but the principle that guide the exercise of such power are ingrained in order 47 of the Civil Procedure Code as rendered in

decisions of the Apex Court. In such circumstances, the impugned order deserves to be set aside.

7. Learned counsel for the applicant/ respondent herein has stoutly defended the direction of the learned Tribunal in granting relief from the initial date of joining and specifying the period within which it is to be paid. Learned counsel for the applicant has taken us to the pleadings of the original application, which we have referred to herein above and submitted that the learned Tribunal committed an error in passing the order in original application despite a prayer to that effect and averments in the pleadings also. As such, these orders which have been relied upon by the learned Tribunal in the review order were passed in the case of similarly situated visually handicapped Canemen in semi-skilled category. Therefore, on the principle of parity, identical relief has been granted in the review. The Union of India has not come out clear on the point that other similarly situated persons have been granted the scale of skilled category of Canemen from the initial date of joining. The applicant being a blind persons should not be denied relief. As such the impugned order does not deserve any interference of this Court on the principle of parity. There is no error or lack of jurisdiction in the order passed by the Learned CAT.

8. We have considered the submission of learned counsel for the parties and taken into account the relevant material pleaded on record. The instant challenge is to an order passed in review jurisdiction by the learned CAT. The principles governing the exercise of review jurisdiction are contained in Order 47 Rule 1 of the Civil Procedure Code which are as under:

"1. Application for review of judgment.- (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order. (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review." [Explanation--The fact that the decision on a question of law on which the judgement of the court is based has been reversed or modified by the subsequent decision of a superior

court in any other case, shall not be a ground for the review of such judgement]

9. The legal principle as to the scope of exercise of review jurisdiction have been well settled in the decisions of the Apex Court from time to time. [See State of West Bengal & others Vrs Kamal Sengupta & another ; (2008) 8 SCC 612 para 35]. It is apparent from the discussion made above by reference to the pleadings on record and a comparison of the order passed by learned CAT in the Original Application No. 237 of 2010 and the review application being R.A. No. 04/2012, that learned Tribunal at the stage of review chose to rely upon orders passed in certain original applications, which were not pleaded or placed on record before the learned Tribunal while deciding the original application. These orders have also not been placed before this Court in the present matter. It further appears that the applicant has not either pleaded that these orders were not within his knowledge or could not have been produced despite due diligence when the original application was decided. On the other hand, it appears that there is a variance in the approach of different Courts in granting consequential relief to employees belonging to semi-skilled Canemen category and visually handicapped. The Union of India has placed the order passed by the Hon'ble Jammu & Kashmir High Court where the relief was limited to a period of 18 months prior to the date of filing of the original sapplication. The pleadings on record and the orders passed by the learned CAT do not throw any light as to why the relief has been molded by granting him the scale of semi-skilled category from the date of initial joining. Consequential relief in individual cases are granted on the basis of the facts of the case and taking into account relevant factors such as delay in approaching the court in seeking relief.

10. Having regard to the discussion made herein above and for the reasons recorded, we are of the considered view that the impugned order expanding relief to the applicant was beyond the scope of review. The applicant has neither been able to make out the case of an error apparent on the face of record nor could show that the orders relied upon by the applicant at the stage of review could not be produced despite exercising due diligence when the original application was decided. It has been pointed out by learned counsel for the Union of India that the respondents were not granted any opportunity to file rejoinder to the review application. We have consciously refrained from observing anything on the merits of the claim of the applicant for arrears of pay from the initial date of joining since the impugned order is found to be unsustainable only on the ground that it was beyond the scope of review jurisdiction of the Learned Tribunal. It further appears that the decisions cited by the parties of different Courts or the Tribunals on the point of grant of scale of pay in the skilled category from the initial date of joining are both ways depending upon the facts and circumstances of such case.

11. As such, the impugned order cannot be sustained in the eyes of law. According the order dated 31.12.2012 passed in R.A. No. 04/2012 by the learned Central Administrative Tribunal, Patna Bench at Ranchi is set aside. The writ

petition stands allowed. Pending I.A.s are closed.