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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9909/2017

UNION OF INDIA AND ORS. ..... Petitioners
Through: Dr. Ashwani Bhardwaj, Advocate

versus

SHEELA DEVI ..... Respondent
Through: Mr. Pradeep Kumar and Mr. Parveen Kumar Nagpal, Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% 16.08.2018

1. The petitioners/Department of Posts, Ministry of Communication and Information Technology have challenged an order dated 07.02.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, allowing O.A. No.4129/2013 filed by the respondent praying *inter alia* for regularisation against a Group D post/MTS Cadre with effect from the date when she was granted temporary status with all consequential benefits, including retiral benefits from the date of her superannuation, i.e., 31.12.2012. Under the impugned order dated 07.02.2017, the Tribunal directed the petitioners to conduct a review of the minutes of the DPC held on 26.08.2013, vis-a-vis the

respondent and if found fit, give her the benefit of regularisation at par with her junior, Smt. Indra, alongwith consequential retiral benefits.

2. Dr. Bhardwaj, learned counsel for the petitioners states at the outset that the captioned O.A. was initially allowed by the Tribunal by a detailed order dated 28.05.2015. However, the petitioners filed a review application (R.A. No.185/2015), which was allowed as the Tribunal accepted the submission made on behalf of the petitioners that there was an error apparent on the face of the record. Accordingly, vide order dated 27.01.2016, the O.A. was restored for a fresh adjudication. Pursuant thereto, the impugned order came to be passed.

3. A reference to the brief facts of the case is considered necessary. The respondent was appointed with the petitioners as a Part Time Farash w.e.f. 16.07.1980; she became a Full Time Farash w.e.f. 01.06.1997 and was granted temporary status w.e.f. 01.06.1998. On the respondent completing three years of service with temporary status, w.e.f. 01.01.2001, she was granted benefits at par with regular Group-D employees, in terms of the letter dated 30.11.1992, issued by the ADG (SPN), Department of Posts, New Delhi. The said facilities included leave, holidays, insurance, GPF, LTC, bonus etc. Insofar as retiral benefits were concerned, the letter dated 30.11.1992 clarified that pension and other retiral benefits would be payable to persons like the respondent herein only upon their regularisation.

4. On the recommendations of the Sixth Central Pay Commission being accepted by the Government of India, the petitioners issued an O.M. dated 23.01.2012 with regard to Group-D employees stating inter alia as follows:-

> *"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."*

5. In terms of the aforesaid recommendations, the respondent was directed to undergo training from 19.03.2012 to 24.03.2012. However, on her completing the training successfully, the respondent was not regularised despite several representations made by her and she finally superannuated on 31.12.2012, without being considered for regularisation. Subsequently, vide order dated 10/11.07.2013, the petitioners turned down the request of the respondent for regularisation. Aggrieved thereby, the respondent had approached the Tribunal for relief.

6. Before the Tribunal, the petitioners took a stand that the respondent was granted temporary status w.e.f. 01.06.1998 and after completion of three years,

she was granted facilities at par with regular Group-D employees w.e.f. 01.06.2001. The respondent was also informed that she was placed at Sr.No.4 in the panel drawn up by the petitioners for regularisation as Multi Task Staff and her case would be taken up for regularisation in due course in terms of the letter dated 17.09.2012. The petitioners stated before the Tribunal that the recruitment process for filling up the vacancies for the subject post for the year 2011, was completed only on 26.08.2013, by which time the respondent had superannuated on 31.12.2012. Claiming that an employee does not have a right to be promoted upon her retirement, the petitioners took a plea before the Tribunal that the respondent's case was rightly excluded from consideration for regularisation, though she was at Sr.No.4 in the seniority list.

7. The aforesaid submissions were however controverted by the counsel for the respondent, who stated that the respondent had rendered service of over 32 years with the Postal Department and was still denied retiral benefits due to their casual and indifferent approach of not taking timely steps to fill up the vacancies that were available in the year 2011. He had submitted that had the said vacancies been filled up on time, the respondent would have been duly encadred as a MTS before her superannuation and would have been granted retiral benefits.

8. After hearing the arguments advanced by the counsels for the parties, the Tribunal concurred with the submissions made by the counsel for the respondent and observed that had the DPC been held on time, the respondent

would have been considered for regularisation since she was at Sr.No.4 and senior to one Smt. Indra, who was junior to her in the seniority list drawn up by the petitioners.

9. That the respondent was at Sr.No.4 in the panel of candidates for regularisation as MTS and was senior to Smt. Indra is an undisputed position. It is apparent that it was on account of the administrative delay on the part of the petitioners that has resulted in depriving the respondent of her right of regularisation. Reliance has been placed by learned counsel for the petitioners on the OM dated 12.10.1998, which states that where the DPC could not be held in a year for reasons beyond control, in the DPC that meets thereafter, retired officers who are within the zone of consideration/panel for that year are also to be considered for inclusion in the panel. However, they would have no right for actual promotion as pay and allowances attached to a post is admissible only from the date of assumption of the charge of the post.

10. We may note that the captioned OM dated 12.10.1998 has been issued in the context of making promotions to a post, whereas in the case in hand, the issue that arose for consideration was regularisation of the respondent in the MTS Cadre for which vacancies were admittedly available in the year 2011. Furthermore, even if the said OM was sought to be applied by the petitioners, then the reasons for not conducting the DPC in the relevant year had to be explained, which did not take place here. Therefore, the plea that the DPC could not conducted by the petitioners for making regular appointments in the

cadre of MTS before the date the respondent had superannuated, was for reasons beyond the control of the Department, is found to be absolutely unacceptable. Admittedly, a person junior to the respondent, namely, Smt. Indra had been encadred w.e.f. 09.11.2013, whereas the respondent, who was senior and at Sr.No.4, was excluded on the ground that she had superannuated on 31.12.2012. This aspect has rightly been highlighted by the Tribunal in para 5.3 of the impugned order, which reads as follows:-

> *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."*

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.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 16, 2018
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