CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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R.A. NO.50/2004
in
O.A. NO.1736/2002

This the 15th day of July, 2004

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

Union of India & Ors. ... Applicants

(By Shri V.S.R.Krishna, Advocate)

-versus-

Saroop Chand & Anr. ... Respondents

(By Shri P. S. Mahendru, Advocate)

O R D E R

This application has been made on behalf of the respondents in OA No.1736/2002 seeking review of Tribunal's order dated 21.5.2003 whereby the said OA was disposed of with certain directions. The learned counsel of the applicants in the RA contended that the Tribunal had issued the directions in the OA on the ground that removal orders from service dated 1.1.2002 of the applicant in the OA had not been served on him, nor had the respondents made any such averments in their counter reply. Respondents in their counter reply stated that the applicant had been removed from service and the related order dated 1.1.2002 had been communicated to him. He pointed out that Annexure RA-2 is the order removing the applicant in the OA from service and the applicant had put his signatures in acknowledgement of receipt of the said orders. Thus there is an error apparent on the face of record and as such Tribunal's orders must be recalled.

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2. On the other hand, the learned counsel of respondents in the review application drawing attention to paragraph 3 of Tribunal's order dated 21.5.2003 (Annexure RA-1) contended that respondents' counsel in the OA had admitted that while the respondents should have communicated the removal order "there is nothing on record to show that this was actually done". The learned counsel maintained that after such admission put forward on behalf of the respondents in the OA, they cannot now turn around to state that the order of removal from service was communicated. The learned counsel relied upon **B.H.Prabhakar & Ors. v. M.D. Karnataka State Coop. Apex Bank Ltd.**, JT 2000 (7) SC 359 to contend that no error had been committed in the Tribunal's order and as such the review application is liable to be dismissed.

3. I have considered the respective contentions made on behalf of both sides.

4. Paragraph 3 of Tribunal's order (Annexure RA-1) reads as follows :

> "3. Learned counsel for the applicant has also submitted that the removal order dated 1.1.2002 stated to have been issued by the respondents on the grounds of unauthorised absence after holding a Departmental enquiry has not been received by applicant No.1. He has also submitted that the respondents in their reply have nowhere stated that the removal order has been sent or communicated to applicant No.1. In the absence of such communication, learned counsel has contended that this order is non-est in law as merely taking a decision in the file without communicating it will not have the effect of removing applicant No.1 from service. Learned counsel for the respondents merely submits that the said removal order should have been communicated to the applicant but there is nothing on

record to show that this was actually done. The applicant in the rejoinder, has submitted that the facts stated by the respondents with regard to service of removal order dated 1.1.2002 is incorrect and he has also stated that no such order has been served on applicant No.1 and as such the question of submitting any appeal against the same did not arise. He has reiterated the fact that he is not medically fit and learned counsel has reiterated the prayer that the respondents may be directed to send the applicant for medical examination and if he is found medically unfit, then the request of applicant No.2 for compassionate appointment may be considered."

5. While the respondents had not produced any records at the time of hearing of the OA, the learned counsel of the respondents in the OA had admitted that he did not have any records to show that the order of removal from service was actually communicated to the applicant in the OA. In this backdrop, the OA was disposed of with certain directions. In the counter affidavit respondents in the OA had stated, "applicant was informed vide office letter No.4/Med/SAN/TKD/2002 dated 1.1.2002" about his removal from service. However, in the rejoinder, the applicant in the OA had submitted that the alleged order of removal from service was never served on him. Respondents in the OA had not produced any records to the contrary to establish that the order of removal from service was served on the applicant. Again, while in the counter the respondents had stated that the order of removal from service bore No.4/Med/SAN/TKD dated 1.1.2002, in the review application they have filed copy of the so called order of removal from service of the applicant which bears No.1/Med/TKD/01 dated 1.1.2002 (Annexure RA-2). Not only the learned counsel of the respondents at the time of

arguments had submitted that he had nothing to establish communication of the related orders, the number of Annexure RA-2 is also different than the letter described in the counter reply of the respondents in the OA. The ratio of the case of **Prabhakar** (supra) is certainly applicable to the facts of the present case. In that case an affidavit of Manager, Legal Cell was not pressed at the time of passing the impugned judgment. Another issue was based on anti-labour policy of the Bank as per the order passed by the order passed by the Hon'ble Supreme Court in **Dharwad P.W.D. Employees Association** v. **State of Karnataka** [JT 1990 (1) SC 343] which was again not contended at the time of passing of the impugned order. It was held that no error much less any patent error of law could be demonstrated.

6. Even if the respondents in the OA had stated in their pleadings that order of removal from service had been communicated to the applicant, when the learned counsel had not pressed the same and conceded that he had no proof of communication of the said orders, a contrary view cannot now be adopted on behalf of the respondents in. the OA. That would amount to re-arguing the case which is beyond the scope and ambit of a review application. In this backdrop, it is found that there is no patent error of fact or law in the Tribunal's orders.

7. Having regard to the discussion made above, the review application is dismissed.

V K Majotra

(V. K. Majotra) 15.7.09
Vice-Chairman (A)

/as/