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**Central Administrative Tribunal
Principal Bench**

**RA No. 174/2009
M.A. No. 1878/2009
MA No. 1879/2009 In
O.A. No.1161/2002**

New Delhi, this the 19th day of October, 2010

**Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)**

1. Union of India
through its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110 011.
2. The Director General (Works)
C.P.W.D., Nirman Bhawan,
New Delhi-110011.
3. The Superintending Engineer
Civil Co-ordination, CPWD,
R.K. Puram, New Delhi-110 066.
4. The Superintending Engineer
Electrical Co-ordination,
CPWD, R.K. Puram,
New Delhi-110066.

..Review Applicants

By Advocate: Shri A.K. Bhardwaj with Ms. Jaishree Raj.

Versus

1. All India CPWD (MRM)
Karamchari Sangathan (Regd.)
Through its President,
Shri Satish Kumar
4823, Balbir Nagar Extension,
Gali No.13, Shahdara,
Delhi-110032.
2. Suresh Kumar S/o Shri Ram Kumar
3. Krishan Bahadur S/o Shri Jang Bahadur
4. Prakash Chand S/o Shri Surendra Dutta
5. Madan Lal S/o Shri Mool Chand Gujjar
6. Mehar Singh S/o Shri Bhagwat Singh
7. Subhash Chand S/o Shri Tora Ram



8. Sushma Devi D/o Late Shri Mahavir Pandit
9. Rajinder Kumar S/o Shri Muttu Tanwar
10. Sunil Kumar S/o Shri Ram Avtar
11. Surender Singh S/o Shri sukhdev Singh
12. Raghuvir Singh S/o Late Shri Mangat Ram
13. Phoolwati W/o Late Vijay
14. Omvati W/o Late Horam Singh
15. Kant Lal Yadav S/o Shri Ram Lachan
16. Dinesh Singh Negi S/o Shri Gulab Singh Negi
17. Devi Dass S/o Shri Itwari Lal
18. Mukhinder Singh S/o Shri Chanchal Singh
19. Mohinder Pal Singh S/o Shri Gabbar Singh Rawat
20. Manik Roy S/o Shri Mritunjai Roy
21. Manoj Koche S/o Shri Ramdas Koche
22. Kesav More S/o Shri Gonduji More
23. Rajesh Wadghare S/o Shri Sadashiv Wadghare
24. Pahjab Bawane S/o Shri Kothi Ram Bawane ...Respondents in the RA

Applicants No.2 to 24 all are
C/o All India CPWD (MRM) Karamchari
Sangathan (Regd). 4823, Balbir Nagar Extension
Gali No.13, Shahdara,
Delhi-110032.

By Advocate: Ms. Manisha Badoni for Shri Naresh Kaushik.

ORDER

By Hon'ble Mrs. Meera Chhibber, Member (J) :

RA had been filed by the respondents against judgment dated 17.12.2003 passed in OA No.1161/2002 on the ground that some of the applicants viz. 17, 21, 22, 23 and 24 were working on contract basis. As far as applicants No.11, 17, 19, 21, 22, 23 and 24 are concerned, they were working outside the territorial jurisdiction of the Tribunal,



therefore, OA was not maintainable qua them. There was no relationship of master and servant between the respondents and the applicants, therefore, no direction could have been given to confer temporary status on them or to regularize them in the regular vacancies. They have also stated that the applicant No.20 had been dropped. There were only 24 applicants whereas in the judgment it has been mentioned 25 applicants have filed the OA.

2. They had also filed an application for condonation of delay on the ground that judgment dated 17.12.2003 was received by them on 2.1.2004. The legal opinion was sought and thereafter work orders were called for. This could be collected only on 24.5.2005. Accordingly, RA was filed in October, 2005. The Registry had raised objections but matter was not refiled as they were awaiting the outcome of the Full Bench judgment where the question "whether delay can be condoned in RA or not" was referred to. The said decision came on 14.5.2009 declaring that the Tribunal has the power to condone the delay in RA. In view of above, RA was refiled on 28.8.2009. They have thus prayed that the delay in filing and refiling the RA may be condoned.


3. We have heard both the counsel and perused the pleadings.

4. As per Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 period of limitation for filing review is 30 days from the date of receipt of a copy of the order sought to be reviewed. Admittedly, copy of the judgment dated 17.12.2003 was received by the respondents on 2.1.2004, therefore, review should have been filed by 1.2.2004 whereas respondents initially filed RA on 6th October, 2005, which itself was barred by limitation. Along with the RA respondents had filed MA No. 1879/2009 seeking condonation of delay in filing the RA on the ground that though copy of the order was received on 2.1.2004, time was



consumed in arranging the work orders from different places because respondents had specifically stated that some of the applicants were working on work contract and there was no relationship of master and servant. Had this been the only delay, we would have condoned the same because there was at least some justification in filing the RA with delay.

5. However, what is relevant is that after filing the RA, certain objections were raised by the Registry, therefore, the RA was taken back by the respondents and for good 4 years the RA was never refiled. It was refiled only on 28.8.2009. It is this delay which is crucial and needs to be explained by the respondents. After all, if they were aggrieved by the judgment given by the Tribunal, they ought to have taken steps to pursue their RA in its correct spirit. The only ground taken by the respondents for seeking condonation of delay for this 4 years is that the question whether delay could be condoned in filing the RA was pending before the Full Bench, therefore, they did not refile the RA. This reasoning does not appeal to us at all because even if the question was referred to the Full Bench, respondents could have refiled the RA and then got the matter tagged with the case which was pending before the Full Bench. They could not have waited for refiling the RA, till the matter was finally decided by the Full Bench. After all, delay was indeed condoned in some of the RAs by Principal Bench in case justifiable reasons were shown for condoning the delay by the parties for filing the RAs even before the matter was finally decided by the Full Bench. In these circumstances, the reason given by the respondents for not refiling the RA in time is not found to be justifiable, therefore, 2nd part of delay cannot be condoned. The RA is liable to be dismissed on this ground alone.




6. In any case perusal of the judgment dated 17.12.2003 in which RA has been filed by the respondents shows that all the contentions which have been raised by the respondents were noted by the Tribunal, yet the OA was disposed of with the following directions:-

“ As regards the facts in this case are concerned, the same are not disputed except certain persons who have rendered service from different dates of appointment. The only plea taken by the respondents is that since there is a ban on recruitment so these employees cannot be regularized. However, the learned counsel for the applicants has referred to a judgment given in OA No.1550/1999 and also in OA 845/2000 and we find that the case of the applicants is fully covered by those two judgments. In this case also the facts show that all these applicants have been working from 1986 to 1994 and are still continuing to work. This goes undisputably to show that the applicants have been working for sufficiently long period and work is also available with the respondents so we are of the considered opinion that the OA can be disposed of with a direction to the respondents to consider applicants case for regularization in their turn from the date vacancy becomes available and as per the Recruitment Rules and instructions on the subject. Respondents are further directed to verify the particulars given by the applicants. If any of the applicants had been working on the date when the scheme for temporary status was promulgated and they are eligible for being conferred with temporary status then the same be also conferred and thereafter their services should be regularized whenever regular vacancy becomes available”.

meaning thereby that a conscious decision was taken by the Tribunal to decide the OA with the above directions.

7. Once OA has been decided by a co-ordinate bench by recording the observations, we cannot sit in appeal over the judgment given by a Co-ordinate Bench. It has been held by Hon'ble Supreme Court in the case of Union of India vs. Tarit Ranjan Dass (2004 SCC (L&S) 160) as under:

“13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and hearing of the matter to



facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court."

8. In State of West Bengal and Others Vs. Kamal Sengupta and Another reported in 2008 (8) SCC 612 the Hon'ble Supreme Court has in Para 15 thereof observed as under:-

"The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.

9. In view of above, no case is made out for review of the judgment. Even otherwise, the only direction given to the respondents was to consider applicant's case for regularization in their turn from the date the vacancy becomes available as per the Recruitment Rules and instructions on the subject. It is thus clear that no positive direction was given by the Tribunal to regularize the applicants. Since respondents were directed to consider the applicants in accordance with law, it was open to the respondents to pass appropriate orders in accordance with law.

10. In view of above, no case is made out for interference by this Tribunal. The RA is accordingly dismissed. No costs.


(SHAIENDRA PANDEY)
MEMBER (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

Rakesh