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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

R.A. NO.307/2003
in
O.A. NO.1618/2001

This the 2nd day of April, 2004

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

Union of India & Ors.

... Applicants

(By Shri B. K. Barera, Advocate)

-versus-

Bijender

... Respondent

(By Shri Sant Lal, Advocate)

O R D E R (ORAL)

OA No.1618/2001 was disposed of vide orders dated 4.2.2002 with the following directions :

"3. Respondents are accordingly directed to consider regularisation/absorption of applicant as EDDA or any other post to which he is eligible, in accordance with rules and instructions against an existing or future vacancy within three months from the date of receipt of a copy of this order, and while doing so take into account the past service rendered by him.

4. Meanwhile applicant may be allowed to continue in respondents' service if the work of the nature he is doing is available with them. No costs."

2. This application has been filed on behalf of the respondents in the OA seeking review of the aforesaid order of the Tribunal. The learned counsel on behalf of the review applicants pointed out that the review applicants had filed CW.No.3540/2002 and CMs6128/2002 & 6843/2003 in the Hon'ble High Court of Delhi which was dismissed as withdrawn with liberty as follows :

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"Learned counsel for the petitioners seeks leave to withdraw the writ petition with liberty to move an appropriate application before the Central Administrative Tribunal, stating that certain factual errors have crept into the impugned order.

The writ petition is accordingly dismissed as withdrawn with liberty, as prayed."

As such, the review applicants have filed the present RA.

3. At the outset, learned counsel of the respondent in the RA raised the following preliminary objections :

- (1) this RA is barred by limitation;
- (2) the review applicants have not pointed out any factual error in the Tribunal's orders sought to be reviewed;
- (3) the review applicants have not come with clean hands inasmuch as they have concealed the fact that the grounds taken in the review application with regard to the alleged serious legal errors in the Tribunal's orders had already been taken by them before the Hon'ble High Court; and
- (4) the grounds taken before the High Court cannot be heard by the Tribunal in RA, and the present RA had to be restricted to factual errors alone.

3. The learned counsel of review applicants stated that as the review applicants had carried the matter

before the Hon'ble High Court, the bar of limitation would not apply to this review application. As regards the error of fact, the learned counsel stated that while the Tribunal in the aforesaid order had observed that "applicant still continues to work as E.D.D.D.A.", his services had been terminated long before that date and as such, this factual error has crept in the Tribunal's orders. As regards the legal error, the learned counsel pointed out that the Tribunal in the order in question had relied on its order dated 17.7.2001 in OA No.2263/1999 : **Satyam v. Union of India** directing consideration for regularisation/absorption of applicant as EDDA by taking into account the past service rendered by the applicant. He further stated that the ratio of the case of **Satyam** was superseded by the decision of the larger Bench in **D.M.Nagesh & Ors. v. Asstt. Supdt. of Post Offices, Bangalore**, 2000 (2) ATJ 259 which has been upheld by the Hon'ble High Court of Karnataka in Writ Petitions No.21331-333/2000. (**D.M.Nagesh & Ors. v. Asstt. Supdt. of Post Office, Bangalore & Ors.**) vide judgment dated 18.8.2001.

4. I have considered the contentions of both the learned counsel.

5. As to the point of limitation, it is observed that the Tribunal had passed the order on 4.2.2002. The same was communicated to the review applicants on 8.2.2002. Under the provisions of rule 17(1) of Central Administrative Tribunal (Procedure) Rules, 1987, application for review can be filed within thirty days

from the date of receipt of the copy of the order of which review is sought. The review applicants did not file the review application within the stipulated period. However, after the expiry of the prescribed limitation period for filing RA, they filed CWP No.3540/2002 before the Hon'ble High Court. The same was admitted on 30.5.21002 and the Tribunal's order was stayed. The review applicants/petitioners in the said Writ Petition withdrew the CWP and the same was dismissed as withdrawn vide order dated 2.9.2003 (Annexure RA-5). They had stated that certain factual errors had crept into the impugned order and sought liberty to move appropriate application before the Tribunal. The liberty as sought for was granted. Section 9 of the Limitation Act lays down that where once time has begun to run, no subsequent disability or inability to institute a suit or make application can stop it. Section 3 of the said Act lays down that every suit instituted, appeal preferred and application made after the prescribed period has to be dismissed although limitation has not been set up as a defence. Section 14 of the said Act, however, provides for exclusion of the time of proceeding bona fide in court without jurisdiction in computing the period of limitation for any suit or application. Thus, the period spent in proceeding in the Hon'ble High Court in respect of the CWP in the same matter can be excluded in computing the period of limitation prescribed for filing the RA. Since the RA had already become time barred even before the review applicants/petitioners filed their CWP, the liberty granted for filing RA has to be considered in view of the limitation period prescribed in rule 17(1) of

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the CAT (Procedure) Rules. Thus, basically, this RA is barred by limitation. Again, this RA is found to be devoid of merit as well.

6. While liberty had been granted to point out factual errors in the Tribunal's order, the review applicants have failed to establish any such apparent factual errors on the face of record. The learned counsel of the review applicants stated that the Tribunal had erred in observing that "applicant still continues to work as E.D.D.A.", though he had ceased to work with them.

7. I have checked up on this issue from the counter affidavit filed by the review applicants in the related OA. They had stated that the applicant in the OA had worked with the respondents from 26.9.1998 to 6.10.1999, from 21.10.1999 to 31.8.2000, from 3.10.2000 ^{and from th} to 15.12.2000, ^{to} 16.5.2001 to 11.8.2001. In the end of paragraph 1 of the counter reply, respondents/review applicants had stated, "The applicant is still working as EDDA". Obviously, the review applicants have made a wrong assertion that while the applicant was not working with them, the Court had observed that he still continued to work as EDDA. There is no apparent factual error in the Tribunal's orders, therefore.

8. The contention of the review respondent that legal grounds had been taken by the Union of India (review applicants herein) in their CWP against the Tribunal's order which was withdrawn vide order dated

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2.9.2003 and as such, those grounds cannot be considered in the RA as liberty had been granted to them for moving an appropriate application before the Tribunal in respect of factual errors only in the Tribunal's order, has not been rebutted on behalf of the review applicants. Obviously, they had concealed this fact that the grounds explored in the RA in regard to the alleged serious legal errors had already been taken by them in their CWP, including reliance on the cases of D.M.Nagesh & Ors. (supra), which they had withdrawn. The present RA could have been made only in respect of the factual errors, if any. These legal grounds cannot be considered in this RA having already been explored in the CWP before the Hon'ble High Court which had granted liberty to the review applicants to point out "certain factual errors" in the Tribunal's order before the Tribunal.

9. In the result, the review application is dismissed.

V.K. Majotra

(V. K. Majotra) 2.4.04.
Vice Chairman (A)

/as/