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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

R.A. NO. 81/2001

in

O.A. NO. 792/1999

This the 25th day of January, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

1. Union of India through
Sr. Supdt. Post Offices,
Mathura Division,
Civil Lines, Mathura.
2. Sub-Divisional Inspector Post Offices,
East Division, Mathura. Applicants

(By Shri K.K.Patel, Advocate)

-versus-

Shiv Shankar S/O Ramji Lal,
Ex-Extra Departmental Delivery Agent,
P.O.Kishanpur Via Mohabad, Mathura.
C/O Shri Dharmendra Kumar Sharma,
House No.RA B/2, Palam Colony,
Raj Nagar, New Delhi-45. Respondent

(By Shri D.P.Sharma, Advocate)

O R D E R

By order dated 26.5.2000 in OA No.792/1999 this
Tribunal made the following directions :

"8. I find from the material on record
that no action was taken against the
applicant despite allegation of
unsatisfactory work and he was not expelled
from engagement as a substitute EDDA. He had
been engaged as EDDA time and again during
the period 17.9.96 to 11.1.99 for different
spells. The applicant fulfills the conditions
laid down for the post. He has rendered
public service as substitute EDDA for more
than 180 days spread over a period of about 2
and 1/2 years. As per the relevant rules,
and aforesaid orders of this Tribunal, the
applicant is entitled for consideration on
regular appointment as EDDA. The respondents
are, in view of the above reasons and
discussions, directed to consider the case of
the applicant against any vacancy of EDA
which may arise alongwith other candidates
who may be sponsored. The applicant will be

given due consideration and preference on account of service already rendered by him. No order as to costs."

2. Respondents in the said OA have made the present review application stating that the issue of giving weightage to the past experience of an applicant to an ED Agent's post gained while working as ED Agent on a provisional basis or as a substitute was decided by a Bench comprising five Members of this Tribunal at Bangalore on 19/20.4.2000 in D.M.Nagesh & Ors. v. Assistant Superintendent of Post Offices & Ors. The issues involved were decided as follows :

"33. In view of the foregoing discussion, we have no hesitation in holding that the decision of the Full Bench in the case of G.S.Parvathy which directs weightage to be given, cannot be sustained and the same is accordingly overruled in so far as the aforesaid question is concerned. The aforesaid issue No.1 referred to the present Full Bench is answered in the negative.

34. This takes us to the consideration of the next issue viz., whether the benefit of the instructions contained in DG(P)'s letter dated 6.6.1988 can be claimed by an ED Agent appointed either as a substitute or on provisional basis on his/her completing continuous service of 240 days in a year?.... The above letter, in our view, deals with the service of casual labourers. The same seeks to give benefits to casual labourers who have put in 240 days in a year whether on full time or part time basis for recruitment to the ED posts...."

"36. For the foregoing reasons issue No.2 is answered in the negative."

3. The learned counsel stated that at the time of hearing of OA No.792/1999 the aforesaid order of Larger Bench was not in the knowledge of the review applicants. It was received by them on 10.1.2001 from the head office

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(Annexure R-3). The learned counsel further stated that the review applicants have also filed a writ petition before the High Court of Delhi which has been adjourned by the High Court on being informed about the aforesaid decision of the Larger Bench of the Tribunal. The Larger Bench judgment has been upheld by the Karnataka High Court in Writ Petition Nos. 21331-333/2000 (D.M.Nagesh & Ors. v. Assistant Superintendent of Post Offices & Ors.) decided on 18.8.2001. The learned counsel Shri Patel sought condonation of delay in making the review application on the ground that the aforesated Larger Bench decision was not available when the arguments were heard in the OA.

4. The learned counsel of the opposite side Shri D.P.Sharma stated that whereas the judgment in question was pronounced on 26.5.2000, the respondents have made the review application in February, 2001 which is barred by limitation under Rule 17 of the C.A.T. (Procedure) Rules, 1987, which prescribes a limit of 30 days for filing review application from the date of receipt of copy of the orders sought to be reviewed. According to him, respondents have not explained the delay in filing the present review application.

5. On 4.1.2002, when arguments on the review application were heard and the order was reserved, the learned counsel was called upon to submit information in writing regarding the publication of Full Bench judgment dated 19/20.4.2000 in D.M.Nagesh (supra) before 15.1.2002. The learned counsel has stated in his

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application dated 15.1.2002 that the Full Bench judgment was published in ATJ 2000 (2) 249, i.e., monthly Volumes from May-August, 2000.

6. A Full Bench of the Tribunal at New Delhi in its decision of 17.3.1989 in R.A. 60/88 in T-47/85, has held as follows :

"39. As far as the power of the Tribunal to condone the delay in the filing of a Review Application is concerned, the well established principle of law laid down by the Supreme Court in regard to the term "sufficient cause" has to be followed."

"41. We, therefore, answer the question referred to us in the following manner -

- (1) A Review application has to be filed within 30 days of the communication of the order either by hand to the party or to his counsel or by sending a true copy of the order by registered post properly addressed and pre-paid.
- (2) The Tribunal has the power to condone the delay in the filing of a Review Application where a "sufficient cause" is made out to the satisfaction of the Bench concerned to condone the delay in filing of the Review Application."

Placing reliance on this decision, I find that this Tribunal has power to condone the delay in filing of a review application provided that sufficient cause has been made out. In the OA under question at the time when arguments were heard, the Full Bench judgment of the Tribunal in D.M.Nagesh (supra) was not available. Whereas it was published in ATJ 2000 in the monthly compilation during May-August, 2000, the copy was circulated to the respondents in January, 2001.

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7. In the facts and circumstances of the case, I find that there is a sufficient cause for condoning the delay in filing the present review application and I condone the delay accordingly.

8. The decision in **D.M.Nagesh (supra)** in which it was held that there cannot be any weightage to an applicant for ED Agent's post on the basis of the past experience and further, that even after completion of 240 days, such a person is not entitled for regularisation, is squarely applicable in the present case. The decision in the case of **D.M.Nagesh** has been upheld by the High Court of Karnataka at Bangalore, as stated above. We are bound by the above decision.

9. Having regard to the reasons recorded and discussion made above and finding that the applicant is not entitled for regularisation on the post of ED Agent according him weightage on the basis of his past casual service, I find that it would be in the interest of justice to recall the order dated 26.5.2000 in OA No.792/1999. I order so accordingly. OA No.792/1999 is, therefore, dismissed, however, without any order as to costs.

V.K.Majotra

(V.K.Majotra)
Member (A)

/as/