

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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RA125/2001

in

OA No.316/1999 with OA 189/1999

New Delhi this the 4th day of April, 2001

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman (J)
Hon'ble Mr Govindan S. Tampi, Member (A)

OA 189/1999

Shri Rajiv Kumar Anand,
S/o Shri V.D. Anand,
R/O L-1, 151-B, DDA Flat,
Kalkaji, New Delhi-19

..Petitioner

VERSUS

1. The Officer Incharge,
Institute of Cytology and
Preventive Oncology, Maulana
Azad Medical College Campus,
New Delhi.
2. Director General,
Indian Council of Medical Research,
Ansari Nagar, New Delhi.
3. Govt. of India,
Ministry of Health and Family
Welfare, Nirman Bhawan, New Delhi

.....Respondents

OA No.316/1999

1. Pradeep Kumar mathur,
S/o Shri V D Mathur,
R/o Bharat Apartments,
Plot No.S-26, Flat No.S-3,
Shalimar Garden,
Sahibabad (UP)
2. I.P. Jagga,
S/o Shri Desh Raj Jagga,
R/o House No. 357,
Parmanand Colony, Delhi

.....Applicants

VERSUS

1. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi
2. The Director General,
Indian Council of Medical Research,
Ansari Nagar, New Delhi.

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3. Officer-in-Charge of Cytology and Preventive Oncology (ICMR)
Maulana Azad Medical College Campus,
Bahadur Shah Zafar Marg,
New Delhi
4. Shri Rajiv Kumar Anand,
S/O Shri V M Anand,
R/O L-1/151-B, DDA Flats,
Kalkaji, New Delhi .

.....Respondents.

O R D E R (IN CIRCULATION)

R.A. No. 125/2001 has been filed on 22.2.2001 seeking the recall and review of Tribunal's order dated 15.11.2000 in OA 316/99 alongwith OA 189/99.

2. M.A. No. 614/2001 has also been filed seeking condonation of the delay in filing the application. M.A. has been filed on 22.2.2000, i.e. 2 months after the period for review has expired. No convincing reason for the delay has been brought out in the MA. The same is therefore liable to be dismissed as being hit by limitation. Still, in the interest of justice and as the matter concerned in the RA relates to an order with which the applicants appear to be genuinely aggrieved about, the MA is allowed and RA is being taken for examination on merit.

3. By the impugned order dated 15.11.2000, OA 189/1999 was dismissed while OA 316/99 was allowed with consequential benefits to the concerned applicant and with a direction to the respondents to pay him cost for the OA, which stood quantified at Rs.5,000/-. It is the imposition of the cost which the review applicants who were the respondents in O.As. , seek to assail. The points raised by them are enumerated in paragraphs 3 and 4 of the Review applications. They are reproduced as below:

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"3. That the respondents are State within the meaning of article 12 of the Constitution. It is humbly submitted that while the State cannot be treated differently from any other litigant, but following factors have to be taken into consideration:-

- i) Red tapism in Government.
- ii) Delays in correspondence.
- iii) Habitual in-difference of Government officials.
- iv) Collusion or negligence by Government officials.
- v) Damage to public interest or to public funds or interest of the State.
- vi) Institutional or bureaucratic procedure as well as delays arising and need to render substantial justice on merits.

4. That it is further submitted that imposition of cost on public body has direct effect on the public exchequer. It is also submitted that in such cases the Tax payer's money is spent for payment of cost imposed on the Government bodies. The imposition of cost on the respondents which being one of the Government bodies will also directly affect the public exchequer."

4. The order dated 15.11.2000 in OA No.189/99 alongwith OA No.316/99 was pronounced in open court when the counsel for both the applicants and the respondents were present. It was a detailed order dictated after examining ^{all} the circumstances brought out in the pleadings, and instructions concerned as well as perusing the records of the Departmental Promotional Committee. In fact, the findings of the DPC have even been extensively cited in the order to show as to how the DPC had erred both at the first stage and at the review stage. ^{We} ~~Tribunal~~ had also recorded that a "strange procedure was found to have been adopted to benefit the junior at the cost of the senior who had even worked as Section Officer for four years earlier though on ad hoc basis. ^{We} ~~It~~ further observed " Review DPC which was

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(32) on account of 2

expected to exhibit greater care and caution, more so the complaints generated by its predecessor which necessitated the review, did not cover with it glory in the proceedings. We can only say that we ^{are} ~~have~~ sorry to see this state of affairs. It is time, somebody cried a halt to this. The decision of the DPC in selecting the junior person that too against the instructions on hand was totally wrong. Normally the Tribunal would have remitted the matter back to the DPC for reconsideration but in the circumstances of the case, we are not inclined to permit a second review by the same DPC which may also go the same way. And hence our decision."

5. It is in the above circumstances that cost quantified Rs.5,000/- was ordered by the Tribunal to be paid by the respondents to the applicant in OA No.316/99. In fact we had also concluded the judgement with following remarks:-

"Before we part with this, we would also suggest to DG ICMR to enquire as to how the review DPC, constituted to rectify the mistake committed by the first DPC also chose to adopt the same wrong course of action and take necessary remedies action."

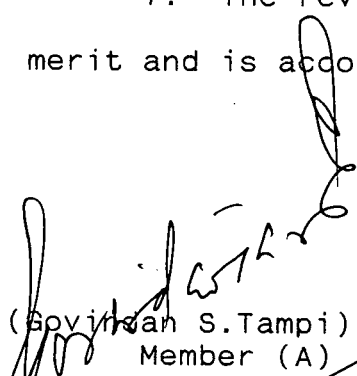
6. In the above circumstances it is clear that we had come to our above decision on justified grounds. Imposition of cost on the respondents was the logical result thereof. To set exception from it on the grounds like red tapism in Government, delays in correspondence, habitual indifference of Government officials, collusion or negligence by Government officials, damage to public interest or to public funds or interest of the State and institutional or bureaucratic procedure as well as delays arising and need to render substantial justice on merits,

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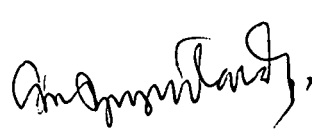
(30)

is attempting to shirk of responsibility. The plea by the review applicant that the imposition of cost on the public body will have the direct affect on the public exchequer is accepted but to a very marginal extent. The State as the model employer has to act correctly and also be seen as acting correctly. If in the exercise on their functions any of the officials charged with the responsibility of performing public duties have ~~have~~ failed to do so properly and has caused embarrassment to the State, the State is not so helpless as not to take remedial actions against the errant officials including the recovery of the cost from them. Seeking review of an order issued properly is no remedy in a situation like this. We are in fact surprised at the move to file the review application and ^mthe grounds raised to justify the same. This also not what is permitted in terms of section 22 (3) (f) of the Central Administrative Tribunals Act, 1985.

7. The review application is totally devoid of any merit and is accordingly dismissed, in circulation.


(Govindan S. Tampi)
Member (A)

Patwal/


(V. Rajagopala Reddy)
Vice Chairman (J)