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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

RA 327/2001

in

OA 716/98

New Delhi this the 5<sup>th</sup> day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).  
Hon'ble Shri S.A.T. Rizvi, Member(A).

In the matter of:

1. The General Manager,  
Central Railway,  
Mumbai CST.
2. The Divisional Railway Manager,  
Central Railway,  
Sholapur. ...Review Applicants/  
Respondents.

(By Advocate Shri E.X. Joseph, senior counsel with  
Ms. Arti Mahajan)

Versus

Shri P.K. Sharma,  
S/o Shri R.S. Sharma,  
R/o 217/G-27, Sector-3,  
Rohini,  
New Delhi-110085. ...Respondent/Applicant.

(By Advocate Shri B.S. Mainee)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

RA 327/01 has been filed by the respondents in  
OA 716/98, praying for review of the order passed by the  
Tribunal dated 11.9.2000 in the O.A. M.A.2128/01 has  
also been filed by them praying for condonation of the  
delay in filing the RA.

2. We have heard Shri E.X. Joseph, learned senior  
counsel for the review applicants and Shri B.S. Mainee,  
learned counsel for the respondent/applicant Shri P.K.  
Sharma in OA 716/98. In the order dated 11.9.2000  
passed in OA 716/98, it was noted that the applicant had

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filed earlier OA 1692/91 which was eventually allowed "on the basis of concession made by the respondent No.3, by order dated 27.11.96". Respondent No. 3 in that O.A. (OA 1692/91) was the DRM, Central Railway, Sholapur who was also Respondent No.3 in the present O.A. The relevant portion of the order of the Tribunal dated 6.12.1996 in O.A.1692/91 reads as follows:

"Both counsel concede that consequent to issue of Respondents order dated 27.11.1996, the applicant's seniority has been re-fixed from 1.1.1984 onwards.

2. Copy of the said order dated 27.11.1996 is taken on record.

3. Applicant now presses for all consequential benefits consequent to refixation of seniority, including promotion and pay fixation to higher grades from the dates from which his juniors were promoted and payment of arrears.

4. Respondents are directed to grant the applicant, the consequential benefits which will flow from orders dated 27.11.1996, as admissible under the Rules/instructions on the subject.

5. O.A. is disposed of as above. No costs".

Thereafter, the applicant had filed CP 10/99 alleging that the respondents had wilfully flouted the Tribunal's directions dated 6.12.1996 in OA 1692/91 which was dismissed by order dated 16.3.2000. In this order, it was noted that the respondents have issued order dated 10.6.1998 withdrawing the seniority granted to the respondent in terms of their letter dated 27.11.1996. It was also noted that the respondents have submitted that all consequential benefits were granted to the applicant and he was placed above the Commercial Clerks and pay

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fixation in higher grade from the date his juniors were promoted had also been paid. Further, it was noted that the respondents had pointed out that since apprentice/Commercial Inspectors such as the applicant were granted regular appointment on 19.9.1984 (wrongly typed in the order as 19.9.1994 instead of 19.9.1984), they could not claim seniority above Commercial Clerks who were upgraded from 1.1.1984 under the restructuring Scheme which came into effect w.e.f. 1.1.1984. The Tribunal had after examining these facts and relevant orders, including the letter dated 10.6.1998 which had cancelled the earlier letters dated 27.11.1996 and 7.3.1997 came to the conclusion that the Tribunal's order dated 6.12.1996 did not contain any findings on merit but merely took note of the respondents' letter dated 27.11.1996. Para 9 of this order reads as follows:

"9. If after issue of that letter dated 7.11.96 the matter was raised by the Union and discussed in the P.N. Meeting and respondents took Railway Board's advice, who opined that promotion from a retrospective date whether proforma or actual entitled a person to seniority from that date, whereupon respondents withdrew the letter dated 27.11.96, it cannot be said that there has been any deliberate, wilful and contumacious disobedience of the Tribunal's order. Respondents should no doubt have taken leave of the Tribunal before issue of the letter dated 10.6.98 withdrawing the benefits granted by letter dated 27.11.96, but this at most is a procedural lapse and cannot be described as deliberate, wilful and contumacious violation of the Tribunal's order".

Finally, it was stated that the question of seniority between the apprentice/Commercial Clerks such as the applicant and those who have been upgraded from 1.1.1984

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cannot be adjudicated in a contempt petition. It was stated that if the applicant was aggrieved by respondents' letter dated 10.6.1998, it was open to him to adjudicate his grievance in accordance with law and dismissed the contempt petition.

3. With reference to the office order issued by Respondent No.3 dated 27.11.1996 which is relied upon by the applicant, the aforesaid letter dated 10.6.1998 had cancelled the same along with the letter dated 7.3.1997.

4. The review applicants/Union of India had filed Civil Writ Petition No. 1846/2001 in the Hon'ble Delhi High Court against the Tribunal's order dated 11.9.2000. They have stated that the Hon'ble High Court had pointed out that if the judgement had been rendered on the basis of patent errors, the remedy would be to file a review application and in view of these oral observations, they have withdrawn the CWF which was accordingly dismissed by order dated 16.4.2001. The review application was thereafter filed on 5.9.2001. Learned senior counsel for review applicants has submitted that the seniority assigned to the applicant vide letter dated 27.11.1996 by DRM, Sholapur was inconsistent with the seniority rules and that letter has since been cancelled which has been noted by the Tribunal in the aforesaid order dated 16.3.2000 in CP 10/99. He has submitted that the applicant had been assigned higher seniority erroneously and even in the judgement of the Tribunal in OA 716/98, notice has been taken of the fact that the earlier order in OA 1692/91 has been passed on the basis of the

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concession made by Respondent No.3 by order dated 27.11.1996. Learned senior counsel has, therefore, submitted that as the records of the applicant and others were at Sholapur Division, it took sometime to examine the matter and decide, including filing the writ petition in the Hon'ble Delhi High court. He has further submitted that as the counsel was in Delhi and the matter was to be examined in Bombay, it has taken some time on various administrative grounds to finalise the present review application. He has, therefore, prayed that in the present facts and circumstances of the case, the prayer in the RA as well as the prayer for condonation of delay in MA 2128/01 may be allowed in the interest of justice as the judgement sought to be reviewed has proceeded on the basis of totally erroneous premises.

5. Shri B.S. Mainee, learned counsel for the applicant in the aforesaid O.As has vehemently opposed the prayers made in the RA and MA. We have also perused the reply filed by the respondents in the review application. Learned counsel has relied on the judgements of the Hon'ble Supreme Court mentioned in the reply and has submitted that the review application cannot be allowed in this case nor the prayer for condonation of delay. He has submitted that there is no error in the judgement, much less apparent on the face of the judgement and what has been contended by the learned counsel for the review applicants is based on lengthy

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arguments wherein he has referred to the various orders of the Tribunal in cases filed by the applicant, as mentioned above. He has also contended that there is nothing wrong with the order dated 27.11.1996 which had been earlier issued by Respondent No.3 on the basis of which the applicant has been given the benefits of seniority, pay fixation in higher grade, arrears, etc. in pursuance of the order of the Tribunal in OA 1692/91. He has submitted that no reasons have been put forward by the review applicants for condonation of delay of several months. Learned counsel has, therefore, submitted that both the RA and MA for condonation of delay should be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties in RA as well as application for condonation of delay.

7. On a perusal of the order dated 11.9.2000 in OA 716/98, it is noted that O.A.1692/91 was eventually allowed which was done on the basis of the concession made by Respondent No.3 in the order dated 27.11.1996. It is relevant to note that the order in CP 10/99 in OA 1692/91, clarifying the position by the ~~Division~~<sup>18</sup> Bench with regard to the earlier order passed by Respondent No.3 dated 27.11.1996 has been passed while O.A.716/98 was still pending. However, that order does not appear to have been brought to the notice of the Tribunal. Shri B.S. Mainee, learned counsel had very vehemently submitted that there was no duty cast on the applicant

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to bring this order to the notice of the Tribunal as the respondents were also very much aware of this order. Be that as it may, the fact remains that the observations of the Tribunal in the order dated 16.3.2000, including the fact that the respondents have since issued order dated 10.6.1998 withdrawing the seniority granted to the applicant in terms of their letter dated 27.11.1996, was not brought to the notice of the Tribunal before passing the order dated 11.9.2000 which we find was very material. The Tribunal had clearly stated that if the applicant was aggrieved by the letter issued by the respondents dated 10.6.1998, it was open to him to agitate his grievance in accordance with law.

8. We have seen the judgements of the Hon'ble Supreme Court referred to by Shri B.S. Mainee, learned counsel and are aware that the review of a judgement is a 'serious step. It cannot be used as if it is an appeal and will be applicable only in a case where there is an apparent error on the face of the record (See the observations of the Hon'ble Supreme Court in **Avtar Singh Vs. Union of India** (AIR 1980 SC 2041) and **Ashok Kumar Pattanaik & Ors. Vs. State of Orissa & Anr.** (1998 (6) SCC 176). The order of the Tribunal dated 11.9.2000 which is the subject matter of the review application does not in the first instance take note of the order passed in CP 10/99 in OA 1692/91, wherein it has been stated that that case has been eventually allowed on the basis of the concession made by order dated 27.11.1996. The factual position arising thereafter has not been

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brought to the notice of the Tribunal. Therefore, there is an error apparent on the face of the record which will result in miscarriage of justice, if the observations and orders issued by the respondents which have a direct bearing on the issues raised in OA 716/98 are not considered and adjudicated upon. In this view of the matter, the observations of the Hon'ble Supreme Court in the cases of **Avtar Singh and Ashok Kumar Pattanaik (supra)** would be applicable to the facts in this case. In the facts and circumstances of the case, we consider that the rectification of the order is necessary to remove the error and not for disturbing finality. In this view of the matter, the O.A. is liable to succeed on merits.

9. With regard to the question of condonation of delay, we find that there is no doubt that there has been delay on the part of the respondents in filing the review application. However, taking into account the particular facts and circumstances of the case, including the fact that the officers of the respondents in Bombay and Delhi were dealing with this matter and the fact that the order dated 11.9.2000 had not taken into account the aforesaid observations and the subsequent order passed by the Tribunal in CP 10/99 in OA 1692/91 dated 16.3.2000, we consider it proper to condone the delay, having regard to the merits of the review application and in the interest of justice which is the fundamental principle above all.

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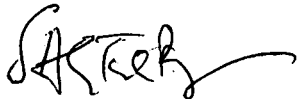


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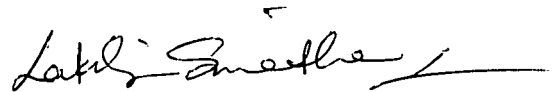
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10. Accordingly, for the reasons given above RA 327/01 and MA 2128/01 are allowed. Consequently, the order dated 11.9.2000 in OA 716/98 is recalled.

11. Let O.A.716/98 be listed for hearing under regular matters on 18.9.2002.



(S.A.T. Rizvi)  
Member(A)



(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

'SRD'