Central Administrative Tribunal
Principal Bench

RA 23/99
in
OA 2386/98
with
RA 28/99
in
OA 2385/98

New Delhi this the 8 th day of September, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri N. Sahu, Member(A).

R.A.23/99.

1. Prafulla Chandra Mishra,
S/o Shri Bhagirathi Mishra,
Assistant Director,
Industrial Statistics Wing,
Central Statistical Organisation,
Department of Statistics,
Ministry of Planning and
Programme Implementation,
1, Council House Street,
Calcutta-700 001.

2. Ranjit Kumar Tiwary,
S/o Shri Rama Shankar Tiwari,
Assistant Director,
Directorate General of Commercial,
Intelligence and Statistics,
Ministry of Commerce,
1, Council House Street,
Calcutta-700 001. ... Review Applicants.

By Advocate Shri S.K. Dass.

In the matter of:

(J.S. Venkateswarlu & Ors. Vs. Union of India (OA 2386/98)).

Versus

Union of India, through
the Secretary,
Department of Statistics,
Ministry of Planning and Programme
Implementation, Sardar Patel Bhawan,
Sansad Marg,
New Delhi. ... Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

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R.A. 28/99.

1. Prafulla Chandra Mishra,
S/o Shri Bhagirathi Mishra,
Assistant Director,
Industrial Statistics Wing,
Central Statistical Organisation,
Department of Statistics,
Ministry of Planning and
Programme Implementation,
1, Council House Street,
Calcutta-700 001.

2. Ranjit Kumar Tiwary,
S/o Shri Rama Shankar Tiwari,
Assistant Director,
Directorate General of Commercial,
Intelligence and Statistics,
Ministry of Commerce,
1, Council House Street,
Calcutta-700 001. ... Review Applicants.

By Advocate Shri S.K. Dass.

In the matter of:

(J.S. Venkateswarlu & Ors. Vs. UOI & Ors. (O.A. 2385/98)).

Versus

1. Union of India, through
the Secretary,
Department of Statistics,
Ministry of Planning and Programme
Implementation, Sardar Patel Bhawan,
Sansad Marg,
New Delhi. ... Respondents.

2. Ms. Pravin Horo (ST),
Deputy Director,
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan, Maulana Azad Road,
New Delhi-10 011.

3. Shri Kal Singh,
Deputy Director,
Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110 001.

4. Shri Sukh Ram Meena,
Chief Statistical Officer,
National Crime Records Bureau,
Ministry of Home Affairs,
East Block, R.K. Puram,
New Delhi-110066.

By Advocate Shri P.H. Ramchandari, Sr. Counsel.

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O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The above Review Applications (RAs 23/99 and 28/99) have been filed by the applicants S/Shri P.C. Mishra and R.K. Tiwary, who were Applicants 2 and 4 in O.As. 2385/98 and 2386/98 respectively, praying for review of the order dated 4.12.1998 or alternatively refer the matter to the Full Bench.

2. We have perused the pleadings and heard Shri S.K. Dass and Shri P.H. Ramchandani, learned counsel for the parties at some length.

3. Shri S.K. Dass, learned counsel, has contended that as there was no statutory remedy available to the officers of the Indian Statistical Service (I.S.S.) to file an appeal to the appellate authority against the orders which have been impugned in O.A.2385/98 and O.A. 2386/98, the Tribunal had given an erroneous order which needs to be reviewed. He has relied on the judgement of the Tribunal in **T.R. Mohanty Vs. Union of India & Ors.** (O.A. 2498/90), decided on 24.4.1995. He has submitted that the impugned order has been issued in the name of the President of India and, therefore, no appeal lies nor any representation lies except a Memorial which the applicant had not made. In the circumstances, learned counsel has submitted that the impugned order dated 4.12.1998 should be reviewed. He has submitted that in para 6 of the O.A. it was mentioned that there was no statutory remedy available to the officers of the I.S.S. under the Indian Statistical Service Rules, 1961 (hereinafter referred to as 'the 1961 Rules') and, therefore, they need not make any representation before approaching the Tribunal for necessary relief. He has also

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relied on the judgement of the Supreme Court in **S.S. Rathore Vs. State of M.P.** (1989 (4) SCC 582) wherein he states that they have dealt with the provsions of Section 20 of the Administrative Tribunals Act, 1985 (for short 'the Act'). He has also relied on the judgement of the Supreme Court in **N.R. Chopra Vs. Lt. Governor, Union Territory of Delhi & Anr.**(1993(23) ATC (CAT) 25)) and **Northern Railwaymen Vs. Union of India & Ors.** (1993(23) ATC (CAT) 926). He has, therefore, submitted that as the representation cannot be considered as an alternate remedy as provided under the 1961 Rules, the Tribunal's order dated 4.12.1998 is erroneous which may, therefore, be recalled/reviewed.

4. On the other hand, the respondents in their reply to the Review Applications have contended that the review applications do not lie in the present case. They have taken a preliminary objection that the RAs are barred by limitation. However, it is noted that the applicants received a copy of the impugned order on 16.12.1998 and the applications have been filed on 13.1.1999 i.e. within 30 days. Accordingly, the preliminary objection is rejected.

5. Shri P.H. Ramchandani, learned Sr. counsel, has submitted that the Tribunal's order dated 4.12.1998 has been rightly based on the provisions of Section 20 of the Act. He has submitted that under Section 20 of the Act, the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has already availed of all the remedies available to him under the relevant service rules. Learned counsel has submitted that it is settled principle of law that a review of a judgement is possible only where there exists an error apparent on the face of the record and cannot be used to reargue the same issues (**Meera Bhanja Vs. Nirmla**

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Kumari Choudhary (AIR 1995 SC 455). He has also relied on a number of other Supreme Court judgements mentioned in the reply. Learned counsel has submitted that the Tribunal had corectly come to the conclusion, in the facts and circumstances of the case, that the applicants should, in the first instance, make a suitable representation to the respondents for their consideration. Learned counsel has submitted that none of the grounds which are accepted as grounds of review is present in this case to warrant review of the impugned order (**Chandra Kanta Vs. Sheik Habib,** (AIR 1975 SC 1500). Learned counsel has submitted that the impugned order which has been passed by the Tribunal on the basis of the records placed before it, is in exercise of its discretion under Sec 20 of the Act and not open to question in these review applications. He has also submitted that the observations of the Tribunal in **T.R. Mohanty's case (supra)** cannot, therefore, be applied in the instant case. He has also referred to Sectopm 80 CPC which provides that before filing a suit against the Government or a public officer, notice in writing is required to be given and the suit can be filed only on expiration of two months thereafter, to enable Government to consider the matter. Similarly, he submits that the Tribunal has correctly passed the impugned order, taking into account the circumstances of the case that the applicants should make a representation to the respondents setting out their grievances for their consideration and hence it was held that the O.A. was premature. Learned counsel has submitted that there is absolutely nothing wrong with the impugned order so as to justify review of the order. He has also contended that in Rule 15 of the 1961 Rules, the conditions of the service of the members of the Service in respect of matters for which no provision is made in the Rules shall be the same as are applicable to Officers of Central Services, Class-I. He,

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therefore, contends that if the applicants were aggrieved by the impugned promotion order, they could have either submitted a Memorial to the President or a representation to the respondents for their consideration before filing the O.A. In the circumstances, he has submitted that the decision of the Tribunal in holding the O.A. as premature is in order and prays that the RAs may be dismissed.

6. We have carefully considered the submissions made by the learned counsel for the parties.

7. Shri S.K. Dass, learned counsel, has contended that there is an apparent error in the Tribunal's order dated 4.12.1998 because we had dismissed the O.A. as premature noting that not even a single representation had been made against the impugned order dated 31.8.1998. His main contention is that there is an error in the impugned order because the Tribunal had not considered the earlier decision in **T.R. Mohanty's case (supra)** wherein it has been stated that there is no remedy by way of statutory appeal under the relevant 1961 Rules. Even if that is so, we are unable to agree with his contentions that there is an apparent error in the order. Paragraph 4 of the impugned order reads as under:

> "Learned counsel for the applicant further submits that in that event the Tribunal may treat the O.A. as representation to the respondents and give a direction to the respondents to dispose of the O.A within two months".
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> (Emphasis added)

The above paragraph dictated in the presence of the learned counsel for the applicant shows that the learned

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counsel for the applicants himself had submitted that in the facts and circumstances of the case the representation to the respondents would be in order. He has submitted that the Tribunal may direct the respondents to treat the O.A. itself as a representation and dispose of the same within a time frame. It is further clear from what has been stated in paragraph 5 of the order, that after considering the above submission, and taking into account the facts and circumstances of the case, we came to the conclusion that the O.A. was premature, leaving it open to the applicants to make a suitable representation to the respondents, if they so wish.

8. Therefore, the contention of the learned counsel for the applicants that because of T.R. **Mohanty's case (supra)** the review application should be allowed, is untenable. His oral contentions that there is absolutely no need for the applicants to make any representation whatsoever to the respondents against the impugned order under any circumstances because none exists under the alternate remedy as provided by the relevant Service Rules begs the question. In that case, there was no need for the learned counsel for the applicants to have made a submission before the Tribunal on 4.12.1998 that the O.A. itself may be treated as a representation to the respondents on which a direction may be given to them to dispose of the same. In this view of the matter, the judgements relied upon by the learned counsel for the applicants will not assist them. In view of the submissions made by the learned counsel for the applicants that the O.A. itself may be treated as the representation, the reverse stand taken in the Review Applications that there is no question of filing any representation is not only an after thought but clearly contrary to the earlier submissions. On this ground alone, the RAs are liable to be dismissed as the impugned order

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is neither erroneous nor there is any error apparent on the face of the record. The provisions of sub-clauses (a) and (b) of sub-section (2) of Section 20 of the Act have also been referred to in the arguments. They have to be read together with the provisions of sub-section (1) of this Section. Sub-section (2) provides as follows:

> "For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-
>
> (a) if a final order has been made by Government or other authority or officer of other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
>
> (b) where no final order has been made by the Government or other authority or officer or the person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired".
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> (Emphasis added)

Section 20 (1) postulates that the Tribunal shall not "ordinarily" admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. ~~Rules~~. The word "ordinarily" in this sub-section will mean that the Tribunal may exempt the procedural need for exhaustion

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of alternate remedies and entertain the application in exercise of its discretion in certain circumstances. Having regard to the nature of the impugned order in the O.As., we had exercised this discretion, taking into account the facts and circumstances of the case and also the submissions of the learned counsel for the applicants referred to in Para 7 above. We are, therefore, unable to agree with the contentions of Shri S.K. Dass, learned counsel, that there is any error apparent on the face of the record in the impugned order to justify review of the order (See also B. Parmeswara Rao Vs. Divisional Engineer, Telecommunication (1990 (13) ATC (CAT) (FB-Hyderabad) 774).

9. Section 20 of the Act clearly refers not only to rejection of an appeal preferred by the aggrieved person against an order passed under the relevant service rules but also refers to a representation made by such person in connection with the grievance. It is, however, relevant to note that under sub-section (3) of Section 20 of the Act, any remedy available to the applicant by way of submission of a memorial to the President or to a Governor of a State or to any other functionary is not deemed to be one of the remedies which are available, unless the applicant had elected to submit such memorial. Under Section 21 of the Act, the limitation for admission of an application has been provided in a case where a final order as mentioned in Clauses (a) and (b) of sub-section (2) of Section 20 has been made, where again reference has been made not only to the appeal but to the representation which might have been given by the person aggrieved. Therefore, it is relevant to note that the provisions of the Act dealing with exhaustion of remedies clearly refer, not only to an appeal which may be preferred by the person aggrieved against the order under the relevant rules, but also to a "representation".

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Section 21 also provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of the remedies under the service rules as to its redressal which provision has to be read with sub-section (2) which follows. In the facts and circumstances of the case and keeping in view the provisions of Sections 20 and 21 of the Act, we see no good ground to allow the review applications.

10. In this connection, the accepted reasoning for the provisions contained in Section 80 CPC, where notice of two months is required to be given before filing a suit against a Government are equally applicable here. A representation in the present circumstances will be somewhat similar to the need for two months notice as provided under Section 80 CPC to be given to the Government, before a person can file a suit in the court. This gives the employer Government an opportunity to look into the employees' grievances again and reply to them. This will help to avoid unnecessary litigation between the employees and employer which will, therefore, be in the public interest.

11. Keeping in view the submissions made by the applicant's counsel himself when the O.A. was considered for admission on 4.12.1998 read with Section 20 of the Act, we, therefore, find no error apparent on the face of the record or any other sufficient reason to allow the Review Applications. The impugned order itself makes it clear that the same was passed in the facts and circumstances of the case keeping in view the relevant provisions.

12. For the reasons given above, RA 23/99 in OA 2386/98 and RA 28/99 in OA 2385/98 are dismissed.

(N. Sahu)
Member(A)

Attested
Advocate
Co-CIV

(Smt. Lakshmi Swaminathan)
Member(J)

SRD