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CAT/7/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

RA 264/95 in
O.A. No. 676/94
T.A. No.

199

DATE OF DECISION 19.5.97

Smt. Suman Bala

Petitioner

Shri B.S. Maine

Advocate for the Petitioner(s)

versus
Union of India & Ors.

Respondent/Review Applicants

Shri P.S. Mahendru

Advocate for the Respondent(

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

The Hon'ble Mr. K. Muthukumar, Member (A).

1. To be referred to the Reporter or not? *y*

2. Whether it needs to be circulated to other Benches of the Tribunal? *x*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

RA 264/95
in
OA 676/94
&
MA 2484/95

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New Delhi this the 19 th day of May, 1997

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

Hon'ble Shri K. Muthukumar, Member(A).

Smt. Suman Bala
W/o Shri R.K. Sandal,
WZ/257, Rishi Nagar,
Shakur Basti,
Delhi-34.

... Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Chief Administrative Officer(Const.)
Northern Railway,
Kashmere Gate,
Delhi.

... Respondents/
Review Applicants

By Advocate Shri P.S. Mahendru.

O R D E R

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

Consequent upon the Tribunal's order dated 10.2.1997, R.A. 264/95 has been listed for arguments. The Review Application has been filed by the respondents in O.A. 676/94 praying for review of the judgement dated 25.7.1995. Along with the R.A., the applicants have also filed M.A. 2484/95 for condonation of delay. The reply to the Review Application has also been filed by the original

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applicant.

2. We have also heard Shri P.S. Mahendru, learned counsel and Shri B.S. Maine, learned counsel, for the parties.

3. The applicant in R.A. has submitted that in the impugned judgement dated 25.7.1995, there is a mistake apparent on the face of the record which calls for review of the judgement. They have submitted that in making the observations in paragraph 6 of the judgement, the Tribunal should have also taken into consideration the averments made in paragraph 4.16 of the counter reply. In particular, Shri P.S. Mahendru, learned counsel, has submitted that in paragraphs 4.7 and 4.16 of the counter reply to O.A. 676/94 the respondents had submitted that the applicant was given temporary status as a Skilled Khalasi and she has never worked as a Typist and that Annexure A-6 is not a document from the official file. It was also argued that merely putting up the proposal does not mean that the competent authority has approved the same and they submit that the Annexure A-6 was only a proposal. On the other hand, Shri B.S. Maine, learned counsel, has submitted that the judgement has been rendered after full consideration of the facts and circumstances and the pay scale of Skilled Khalasi is Rs.950-1500 which is that of Typist also. Shri B.S. Maine, learned counsel, has also relied on another document issued by the respondents dated 4.2.1994 annexed to the reply from which he submits, it is clear that Annexure A-6 order is an official document.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. It is settled law that a Review Application lies under the provisions of Order 47 Rule 1 CPC for review of a

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decision/judgement/order of the Tribunal where it suffers from an error apparent on the face of the record or new material/evidence is discovered which is not within the knowledge of the parties or could not be produced at the time when the order was made despite due diligence or for any sufficient reason. In Chandra Kanta Vs. Sheikh Habib (AIR 1964 SC 1372), the Supreme Court has held that 'a review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility'. A mere repetition.... of old and overruled arguments.... are not sufficient. In another case A.T. Sharma Vs. A.P. Sharma & Ors. (AIR 1974 SC 1047), the Supreme Court has observed that the power of review may be exercised on the discovery of new and important matter or evidence ^{which} was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal.

5. Having carefully gone through the record in O.A. 676/94 of the impugned judgement, ^{again} we are of the considered view that the decision of the Tribunal rests mainly on the Annexure A-6 document. In paragraph 10 of the judgement it has also been stated that the respondents have not denied that the applicant was working as a Typist for quite sometime which, as mentioned in the review application, has been denied in the counter reply. Apart

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from this, in paragraph 4.16 of the counter reply the respondents/review applicants have also submitted that Annexure A-6 is not a document from the official reply.. It is also relevant to note that the respondent /original applicant is now trying to introduce another document dated 4.2.1994 to substantiate her claim which could have also been placed before the court at the time when the case was heard and the judgement delivered on 25.7.1995. In the facts and circumstances of the case, therefore, we are of the view that there is a patent error which has crept in in the impugned order dated 25.7.1995 due to "judicial fallibility" and the review application should, therefore, be allowed on this ground.

5. The review applicants have received a copy of the impugned judgement on 9.8.1995 and have filed the review application on 27.9.1995. In the circumstances mentioned in M.A. 2484/95 and for the reasons given above, we are of the view that this is a fit case to condone the delay in public interest.

6. In the result, RA 264/95 and MA 2484/95 are allowed. The judgement/order dated 25.7.1995 in O.A. 676/94 is recalled.

7. O.A. 676/94 is restored to file and may be listed for hearing after vacation in July, 1997.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'