

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. RA 303/95 in 199
T.A. No. MA 2779/95
MA 2780/95
DA 641/94

Ab

DATE OF DECISION

9-7-97

| | |
|--------------------|--------------------------------|
| Shri J.L.Jain | Petitioner |
| Shri Romesh Gautam | Advocate for the Petitioner(s) |
| Versus | |
| U.O.I. & Ors | Respondent |
| Shri R.L.Dhawan | Advocate for the Respondent(s) |

CORAM

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

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

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

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

Central Administrative Tribunal
Principal Bench

RA 303/95

in

OA 641/94,
MA 2779/95, 2780/95

New Delhi this the 9th day of July, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

J.L. Jain,
FA&CAO (Northern Railway -
since retired),
SC 6, Basant Lane,
New Delhi.

... Applicant.

By Advocate Shri Romesh Gautam.

Versus

1. Union of India through
Chairman-cum-Principal Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. Deputy Secretary (Estt.II),
Railway Board, Rail Bhawan,
New Delhi.

... Respondents.

By Advocate Shri R.L. Dhawan.

O R D E R

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

RA 303/95 has been filed under Section 22 of the Administrative Tribunal Act, 1985 for review of the order dated 11.4.1994 in O.A. 641/94 read with order dated 30.5.1994 in MA 1576/94 and order dated 15.9.1995 in MA 3650/94. We have heard Shri Romesh Gautam, learned counsel for the review applicant and Shri R.L. Dhawan, learned counsel for the respondents and perused the records.

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2. The main contention of the learned counsel for the applicant is that O.A. 641/94 has been erroneously disposed of 'finally' as it was meant only to dispose of interim relief. He, therefore, submits that the impugned order dated 11.4.1994 should be reviewed as there is an error in the judgement. The learned counsel for the applicant, however, admits the delay in filing this review application and has tried to explain the same by stating that there were certain other M.As, namely, 1576/94 and 3650/94 which had been filed in between on which also orders have been passed. He submits that in MA 3650/94, the order has been passed only on 15.9.1995 and this review application has been filed subsequently on 8.11.1995.

3. The learned counsel for the respondents has, on the other hand, submitted that the earlier Miscellaneous applications filed in 1994, referred to above, were for modification/rectification and recall of the order dated 11.4.1994 which have all been dismissed. He has submitted that the present review application is a belated attempt again to prolong the litigation. He has submitted that the impugned order in OA 641/94 has been passed by the Tribunal on the basis of the specific prayer made by the learned counsel for the applicant. In this connection, the learned counsel has relied on the affidavit filed by the then counsel in O.A. 641/94, namely, Shri K.B.S. Rajan, dated 20.10.1994 in which he has tried to explain the impugned order. The learned counsel for the respondents has, therefore, submitted that the RA is an abuse of process of the court and may be dismissed with costs.

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4. We have carefully considered the submissions made by the learned counsel for both the parties and the record. It is clear from a perusal of the order of this Tribunal dated 11.4.1994 in O.A. 641/94, order dated 30.5.1994 in MA 1576/94 and order dated 15.9.1995 in MA 3650/94 that the applicant has made repeated attempts to file Miscellaneous applications on the same ground taken in the present review application. The impugned order is an oral order passed in the presence of Shri K.B.S. Rajan, the then learned counsel for the applicant. In the circumstances, the affidavit filed by the learned counsel does not assist the applicant. It is seen that the order dated 30.5.1994 is passed by a Bench where Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman, was also a member as also in the order dated 11.4.1994 ^{disposing} of O.A. 641/94. The relevant portion of the order dated 30.5.1994 is as follows:

"We have gone through our order carefully and we feel that the same is free from any ambiguity. It requires neither any rectification nor any modification. It does not suffer from any error apparent on the face of record so as to enable us to exercise the power of review which is circumscribed in Order 47 Rule 1 of the Code of Civil Procedure".

In order dated 15.9.1995, the Tribunal had also observed that the applicant has sought the same relief in MA 3650/94 as made in MA 1576/94 which was heard and finally disposed of by order dated 30.5.1994. It was also observed that there is no provision in law, rules or procedure for a second application which again seeks to review the same judgement and the M.A. was dismissed both on the grounds of merit and limitation. If the applicant was aggrieved by the order dated 30.5.1994 which he is reagitating here again.

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in RA 303/95, he could have taken other available remedies open to him under law. As held by the Supreme Court in A.T. Sharma Vs. A.P. Sharma & Ors. (AIR 1990 SC 1047), a power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manners of errors committed by the Subordinate Court. Therefore, in the facts and circumstances of the case, we as a coordinate Bench cannot exercise the power of review. Besides, there is no error or any other sufficient ground like discovery of a 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 passed to warrant review of the impugned order. Therefore, we ^{are} of the considered view that the review application does not lie on merits. Apart from this, the review application which has been filed on 8.11.1995 also suffers from delay and laches and is hopelessly time barred for which we do not consider that any sufficient reasons have been given. Therefore, the review application is also liable to be dismissed on the ground of limitation.

5. The learned counsel for the applicant has sought to rely on the judgement of the Supreme Court in S. Nagraj Vs. State of Karnataka (1993(5) SCC 27) and Katragadda Venkatasubbayya Vs. Kartagadda Virayya (AIR 1957 AP 981).

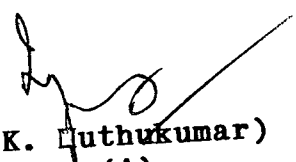
He submits that the review application should be allowed on the ground that ~~the~~ justice should be done taking into account the facts of the case. Having regard to the facts and circumstances in which this review application has been filed, since there has been no miscarriage of justice in the earlier orders, there is no justification for review of the impugned order. The applicant has, in fact, abused

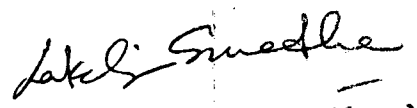
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the process of law by repeated applications on the same grounds and normally we would have imposed heavy cost on the applicant. We, however, refrain from doing so considering the fact that the applicant is a retired person.

6. In the result, the Review Application (RA 303/95), together with MAs 2779/95 and 2780/95 are rejected both on the ground of limitation and merits.


(K. Routhukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'