

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

RA 51/98 in MA 2260/98, MA 896/98
in O.A. No. 614/97
T.A. No.



Date of decision 26-8-98

Shri G.C.Gupta

... Petitioner

Shri S.K.Sawhney

... Advocate for the
Petitioner(s)

VERSUS

UDI & Ors.

... Respondents

Shri R.L.Dhawan

... Advocate for the Respondents

CORAM

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

The Hon'ble Shri S.P.Biswas, 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?

No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

RA 51/98 in
MA 2260/97
MA 696/98
CP 53/98
OA 614/97

(b)

New Delhi this the 26 th day of August, 1998.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri S.P.Biswas, Member (A)

In the matter of

Shri G.C.Gupta ... Applicant
(By Advocate Shri S.K.Sawhney)

Versus

Union of India and Others ... Respondents
(By Advocate Shri R.L.Dhawan)

ORDER

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

This Review Application(RA 51/98) has been filed by the respondents in OA 614/97 seeking review of the order dated 16.10.1997 passed in MA 2260/97. They have submitted that the Review Application comes within the provisions of Order 47 Rule 1 CPC as there is an error apparent on the face of the record which they have submitted, in the circumstances of the case, is an error of law. They have stated that the disciplinary proceedings under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 are pending against the applicant for failure to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of a Railway Servant thereby contravening Rule 3(1)(i)(ii)and (iii) of the Railway Services Conduct Rules, 1966 for which Memorandum of charges dated 22.10.1992 was issued. Since the applicant has retired from service on 30.6.93, the departmental proceedings pending against the applicant shall be deemed to be continued under Rule 9 of the Railway Services Pension Rules, 1993. The Inquiry Officer had submitted his report on 8.3.96 which was sent to

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the applicant on 26.3.1997 for submitting his representation which he did on 24.4.1997. OA 614/97 was filed by the applicant on 14.5.1997 seeking a direction to the respondents to complete the departmental proceedings pending against him within 20 days and to release his commutation of pension and DCRG with 18% interest.

2. The Tribunal had disposed of the OA by order dated 14.8.97 with a direction to the competent authority to finalise and dispose of the disciplinary proceedings in accordance with law within a period of two months from the date of receipt of a copy of this order. In MA 2260/97 the respondents had sought extension of time for compliance of the judgement which has been disposed of by the impugned order dated 16.10.1997.

3. The applicants(original respondents) in RA have submitted that the competent authority who has to pass the orders in the disciplinary proceedings is the President, in consultation with the UPSC, and it requires more time. Shri Dhawan, learned counsel has submitted that the UPSC being a Constitutional body, normally takes 4 to 6 months for tendering their advice in such cases. After the advice is obtained from the UPSC, they are required to submit the papers to the Minister for Railways for passing appropriate orders on behalf of the President and this process normally takes about two months. In the circumstances he submits that the period of two months granted by the order dated 14.8.97 was not at all sufficient. He has, therefore, prayed that the prayer for extension of time sought in MA 2260/97 may be allowed and the impugned order dated 16.10.97 be recalled in the interest of justice.

4. The applicants(original respondents) have also filed MA 896/98 praying for condonation of delay in filing the Review Application. They have submitted that the delay was not deliberate nor intentional as the records in the case had to be examined at various levels for first filing appeal in the Hon'ble High Court and thereafter decision had been taken to

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file Review Application before the Tribunal seeking modification of the earlier order. In the circumstances, they have prayed that condonation of delay may be allowed in the public interest.

5. In pursuance of the Tribunal's order dated 29.4.98, the applicants have also filed additional affidavit in RA giving the details of the action taken by the Railway Administration/ Respondents for finalisation of the disciplinary proceedings in the case. Our attention has also been drawn to the letter dated 23.2.1998 issued by the Secretary, Railway Board in which it has been pointed out that action is being taken against the persons responsible for inaction/delay in the matter. Shri Dhawan, learned counsel has also submitted that in another similar case of disciplinary proceedings in the case of Gyan Singh Vs. UOI and Others (OA 2618/91) decided on 21.8.1997, the Tribunal had disposed of the OA with a direction to the respondents to conclude the disciplinary proceedings and pass a final order within a period of six months from that date. Shri R.L.Dhawan, learned counsel for the applicants/original respondents also relies on the judgements of the Supreme Court in Deputy Registrar, Cooperative Societies, Faizabad Vs. S.N.Pandey and Ors. (JT 1995(2) has distinguished (SC) 407 and State of Andhra Pradesh Vs. N.Radhakrishnan (1998 (SCC) (L&S) 1044. Learned counsel, therefore, submits that similarly in this case also, atleast 6 months further time may be granted to finalise the disciplinary proceedings pending against the applicant in public interest and in the interest of justice.

6. Shri S.K.Sawhney, learned counsel for the respondent/Original Applicant in the OA in reply to RA has submitted that the reasons given in the MA for extension of time are very much part of the OA itself and the Tribunal had taken due notice of these before passing the order dated 14.8.97. He has submitted that the applicant had also made his representation against the Inquiry Officer's report on 24.4.97 and the respondents have unduly

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delayed the whole case and they cannot, therefore, come now to seek further extension of time. He has also submitted that the additional affidavit filed by the respondents shows that they have been sleeping over the matter and delaying the whole case. According to him the RA should be dismissed as it lacks substance. He has also submitted that the original applicant had ~~also~~ filed CP 53/98 against the respondents for not finalising the disciplinary proceedings as ordered in the OA 614/97. However, no notice has been issued in the CP and it is still pending, disposal of the RA 51/98. Shri Sawhney, learned counsel submits that since there is no error of law in the order dated 16.10.97 passed in MA 2260/97 and orders in the OA have now become final, no extension of time may be allowed as prayed for by the applicants/original respondents. He relies on the judgement in N.Radhakrishan's case (supra).

7. We have carefully considered the pleadings in RA 51/98 and MA 2260/97, arising out of order in OA 614/97 and the submissions made by the learned counsel for the parties.

8. We have considered the prayer for condonation of delay in filing the Review Application in MA 896/98. In the facts and circumstances of the case, including ^{the} facts given in the Additional affidavit, and also considering the reasons given for condoning the delay, we are satisfied with the explanations ^{larger} ~~and~~ ^{this} that in the interest of justice MA should be allowed. We accordingly do so.

9. It is settled law that Review Application can be allowed under Rule 17(iii) of the CAT(Procedure) Rules, 1987 read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 provided the same comes within the scope and ambit of the principles laid down under Order 47 Rule 1 CPC. It is also settled law that a Review Application cannot be used as if it is/ appeal against the judgment. Keeping these principles in view, we have carefully examined the case with reference to the relevant judgements of the Hon'ble Supreme Court. We cannot ignore what has been held

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by the Supreme Court in Chandra Kanta Vs. Sheikh Habib (AIR 1975 SC 1500) where it has been 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."

(Emphasis added)

10. In another more recent judgment in S.Nagaraj and Ors.Vs. State of Karnataka and Another (JT 1993(4)SC 27, the Supreme Court has held as follows:-

" Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice.The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under mis-apprehension of true state of circumstances has been held to be sufficient ground to exercise the power."

In the same judgement the Hon'ble Judges have held:-

" Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Courts finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available

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where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which are of us (R.M.Sahai, J) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

(Emphasis added)

11. It is seen from the additional affidavit filed by the applicants in ^{the} RA that the Railway Board themselves have taken a serious view of the matter regarding delay in their office and they have proposed to take action against those persons who are responsible for the same. It has also been stated that loss has been caused to the Railway Administration on account of lapses on the part of the applicant. Taking into account the totality of the facts and circumstances of the case, including the nature of the allegations against the applicant and the judgement of the Supreme Court in Nagaraj's case (supra), technicalities of law should not stand in the way of concluding the proceedings, which requires consultation with the UPSC which is a Constitutional body. Therefore, it cannot be stated that no 'error' has crept in the impugned order with regard to the time required for passing the final order in the pending disciplinary proceedings.

12. Keeping in view the aforesaid salutary observations of the Hon'ble Supreme Court and after careful consideration of the facts mentioned by the applicants in the RA, particularly, the averments made in the additional affidavit, we are of the considered view that a mistake has crept in the impugned order regarding the time frame within which the respondents were required to finalise the disciplinary proceedings. Therefore,

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this mistake has to be rectified as it will otherwise result in a miscarriage of justice.

13. We are unable to agree with the contentions of learned counsel for the applicant/ that delay in the case is totally deliberate or intentional without any explanation by the respondents or that no error has crept in the impugned order by "judicial fallibility" which does not deserve to be corrected by us. The judgment of the Supreme Court in the State of Andhra Pradesh Vs. N. Radhakrishan's case (supra), relied upon by the respondents in RA, itself states that "the balance has to be maintained between purity of administration and the adverse effect which the prolonged proceedings have on an employee. It was further held that each case has to be considered taking into account all relevant facts and circumstances. Another factor in favour of the applicants in the RA is that in a similar case in Gyan Singh's case (supra), the Tribunal had allowed the respondents six months to complete the proceedings and pass a final order, and in the circumstances some uniformity ^{is} ~~uniformity~~ is also desirable in dealing with the present case.

14. We are, therefore, satisfied from the facts of the case that the prayer of the applicants/original respondents in RA for extension of time to finalise the disciplinary proceedings is justified. In the facts and circumstances of the case in order to prevent perpetration of an erroneous order which had been based on erroneous assumption of facts which would result in miscarriage of justice, we respectfully follow the judgement of the Supreme Court in S. Nagaraj and Ors. Vs. State of Karnataka (supra) and recall our order dated 16.10.97.

15. In the result for the reasons given above, RA 51/98 is allowed and the order dated 16.10.1997 in MA 2260/97 is recalled, and allowing further six months from the date of

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pronouncement of this order to the respondents to conclude the pending disciplinary proceedings and pass a final order.

17. In view of the above, CP 53/98 is dismissed as not maintainable at this stage. Notice issued discharged.

S.P.Biswas
(S.P.Biswas)
Member (A)

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

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