

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

RA 209/99

in

O.A. No.1580/97

RAA.No. 2184/99

105

(25)

DATE OF DECISION 8.2.2000

Su.Sumer Singh

.....Review Applicant

Sh.Sant Lal

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.K.R.Sachdeva

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

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

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)

Central Administrative Tribunal
Principal Bench

RA 209/99
in
OA 1580/97,
MA 2184/99

(26)

New Delhi this the 8 th day of February, 2000

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

In the matter of:

Shri Bir Singh Applicant.
Versus
Union of India & Ors. Respondents.

Sumer Singh
S/o Shri Maru Ram,
R/o Village Anandpur,
PO- Jai Singhpur Khera,
Distt. Rewari. Review applicant.

By Advocate Shri Sant Lal.

Versus

1. The Union of India, through
the Secretary,
Ministry of Communication,
Dept. of Posts,
Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General,
Haryana Circle,
Ambala Cantt-133001.
3. The Sr. Supdt. of Post Offices,
Gurgaon Division,
Gurgaon-122001.
4. The Sub Divisional Inspector (Postal),
East Sub Dn. Gurgaon-122001.
5. Shri Bir Singh, Ex. EDDA/R,
Vill & PO - Jai Singhpur Khera,
Tehsil Bawali,
Distt. Rewari (Haryana). Respondents.

By Advocate Shri K.R. Sachdeva.

O R D E R

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

The applicant has filed this Review Application on
24.9.1999 praying for review of the impugned order dated
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3.4.1998 in OA 1580/97. He has also filed MA 2184/99 praying for condonation of delay in filing the RA.

2. The review applicant is Shri Sumer Singh who was not a party in the main O.A. According to him, by order dated 3.4.1998 the official respondents were directed to reinstate the applicant in the O.A., Shri Bir Singh, in the same position which he was holding prior to the issue of the impugned order dated 26.4.1997, which has caused his termination from service. He has stated that he was holding the post of EDDA/R Jai Singhpur Khera C/o Branch Post Office on regular basis while Shri Bir Singh was a provisional/ad hoc appointee of the said post. He has stated in M.A. 2184/99 that a certified copy of the impugned order has been received by him only on 29.9.1999 and he had made an application to the Tribunal on 9.9.1999 that he was not a party to the O.A. and had not been served with the certified copy of the order. He has stated that he is aggrieved by the Tribunal's order and its implementation by the respondents by Memo dated 29.6.1998. Against this, he had made several representations to the respondents but they were unheeded. He had also requested the respondents to supply a copy of the order to which also there was no reply.

3. Shri Sant Lal, learned counsel has very vehemently submitted that the applicant kept on waiting for a reasonable period for the ^{respondents} decision and was earlier advised by some other counsel that he should file a separate O.A. regarding his grievance. However, the learned counsel has submitted that he was of the view that ^{8/} OA will not lie, but it will only be

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a Review Application and hence this Review Application. He has relied on the Full Bench judgement of the Tribunal in Nand Lal Nichani and Ors. Vs. Union of India & Ors. (F.B Judgements Vol. II 85) and the Supreme Court in Ramegowda Vs. Special LAO (AIR 1988 SC 897). In the circumstances of the case, he has submitted that the delay was not due to lack of bonafides on the part of the review applicant but has caused on account of the wrong advice, that the remedy lies to file the O.A. after exhausting the departmental remedies which had been faithfully acted upon. He has, therefore, prayed that the delay may be condoned in filing the Review Application.

4. The review applicant has submitted that he had been selected and appointed on regular basis in accordance with the Recruitment Rules ^{by} the orders of the competent authority whereas Shri Bir Singh was appointed as EDPA/R only on provisional and temporary basis. He has, therefore, contended that his termination was illegal and bad in law. He has also given the reasons for ^{the} need to pursue the departmental remedies first. Learned counsel has also very stoutly contended that neither the applicant Shri Bir Singh nor the official respondents brought to the notice of the Tribunal that the said post has already been filled on regular basis since 10.9.1997 and the regular incumbent has not been made a party in the O.A. This, according to him, is concealment of vital facts and the review applicant should not be penalised for the lapses and fault of others. He has referred to certain judgements of the Supreme Court on ^{the} powers of review in the Review Application and has prayed that the impugned order dated 3.4.1998 should be quashed and set aside and the O.A. re-heard, after notice to all the concerned parties in the

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interest of justice. He has, in particular, relied on the judgement of the Supreme Court in **S. Nagraj & Ors. Vs. State of Karnataka & Ors.** (JT (1993) (5) SC 27).

5. The respondents have filed their reply and we have also heard Shri K.R. Sachdeva, learned counsel. He has very vehemently submitted that there is no question of allowing the Review Application as the department has faithfully implemented the Tribunal's order in OA 1580/97. He has also submitted that the services of Shri Sumer Singh were terminated to implement the Tribunal's directions in O.A. 1580/97, which according to the respondents, is covered under Rule 6 of the EDAs (Conduct and Service) Rules, 1964. Learned counsel has relied on the judgements of the Supreme Court in **Chandra Kanta and Anr. Vs. Sheik Habib** (AIR 1975 SC 1500) and **A.T Sharma Vs. A.P. Sharma & Ors.** (AIR 1979 SC 1047). He has submitted that Shri Bir Singh had also filed O.A. 918/HR/98 in the Chandigarh Bench of the Tribunal which was decided on 3.11.1999 and even at that time the present review applicant was not made a party. He has also submitted that even after receiving the letter dated 29.6.1998, wherein he was informed that his services have been terminated, the applicant did not do anything till filing of this RA on 24.9.1999. Learned counsel has, therefore, submitted that particularly having regard to the fact that the impugned order has since been implemented by the respondents in OA 1580/97 and further action taken in terms of that order, the Review Application should be dismissed.

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6. We have carefully considered the pleadings and the submissions of the learned counsel.

7. It is seen from the reply that the respondents themselves have stated that Shri Sumer Singh was one of the candidates sponsored by the Employment Exchange for the post of EDDA/R Jai Singhpur Khera and was selected for the post of EDDA/R there on regular basis and was given the charge of the post on 10.9.1997 afternoon. In para 14 of the reply they have admitted that it was not in their knowledge at the time of arguments that a regular incumbent has been selected and posted on the particular post of EDDA/R. This is in reply to the averments made by the review applicant that he was regularly appointed and Shri Bir Singh had to make room for him and the earlier reason for his (Bir Singh's) termination that his brother was working as ED.BPM in the same office lost significance when the regular incumbent joined his post. In S. Nagraj's case (*supra*), the Supreme Court has held as follows:

"Review, literally and even judicially means re-examination or reconsideration. 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 statutory and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process of miscarriage of justice... Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.

(Emphasis added)

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8. Therefore, in the circumstances of the case, we find merit in the submissions made by Shri Sant Lal, learned counsel for the review applicant that in the interest of justice, the applicant in RA should have been impleaded by either of the parties in the O.A. as a necessary party, which has not been done. This is sufficient ground to allow the R.A. As very graphically and if we may so beautifully expressed by the Hon'ble Supreme Court in *Nagraj Singh's case* (supra) rectification of the impugned order is required as it "stems from the fundamental principle that justice is above all". Taking into account the totality of the facts and circumstances of the case, therefore, when O.A. 1580/97 was being heard, a duty lay on the applicant and/or the respondents to have brought the correct facts to the notice of the Tribunal which they failed to carry out, which has resulted in injustice to the review applicant.

9. In the facts and circumstances of the case, we find sufficient grounds taken in MA 2184/99 to condone the delay and also justification to allow the Review Application 209/99. Accordingly, the impugned order dated 3.4.1998 in O.A. 1580/97 is recalled.

10. List O.A. 1580/97 under "Regular matters" for hearing on 9.3.2000.

11. Issue copy of this order also to Shri Bir Singh, applicant in O.A. 1580/97 urgently.

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

Adige
(S.R. Adige)
Vice Chairman (A)