

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

M.A.No.2576/2000 in
R.A.No.284/2000 in
OA No.983/95

24

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 24th day of October, 2000

1. Government of National Capital Territory of Delhi through its Chief Secretary, 5 Sham Nath Marg, Delhi - 54.
2. The Chief Fire Officer, Delhi Fire Service, Govt. of National Capital Territory of Delhi, Connaught Place, New Delhi - 110 001.

.....Applicants in RA

(By Mrs. Meera Chhibber, Advocate)

Vs.

1. Mukesh Parkash, s/o Late Sh. Ram Chander Sharma, R/O Village & P.O. Dhankot, Distt. Gurgaon (Haryana).
2. Sundershan Kumar, S/O Sh. G.L.Bahl, R/O H.No.1467, Autram Lane, Kingsway Camp, Delhi.
3. Jit Ram, S/O Sh. Dewan Singh, R/O H.N. -K-52/893, Chanakya Palace, Janakpuri, New Delhi.
4. Rama Nand, S/O Sh. Shakti Singh, R/O H.No. 1/3764, Ram Nagar, Shahdara, Delhi.
5. Brij Bhushan, S/O Sh. Hari Kishan, R/O H.No. 138/1, Gali No.5, Shanker Nagar Extension, Shahdara, Delhi.
6. Sushil Kumar, S/O Late Sh. Sohan Lal, R/O H.No. A-10, Moti Nagar Fire Station, New Delhi.
7. Jugal Kishore, S/O Late Sh.Sukh Ram, R/O C-121-A, Vishwas Park, Uttam Nagar, Shahdara, Delhi.
8. R.S.Sharma, S/O Late Sh. M.L.Sharma, R/O 235-A, Pocket 16, Block C-2-A, Janakpuri, New Delhi.
9. Vijay Pal, S/O Sh. Malkhan Singh, R/O Village Alipur, P.O. Mandola, Distt. Ghaziabad (UP).
10. Avtar Singh, S/O Sh. Pritam Singh, R/O H.No. 432, D.D.A. Flats, New Ranjit Nagar, New Delhi.

11. Kuldeep Kumar, S/O Sh. Jagdish Chander Bali, R/O D-124, Brij Vihar, Ghaziabad (UP).
12. S.P.Gupta, S/O Late Sh. Barumal Gupta, R/O H.No. B-113-B, Gali No.10, Kanti Nagar Extn., Shahdara, Delhi.
13. Smt. L.K.Malhotra, W/O Sh. N.K.Malhotra, R/O H.No.H-17/10, Malviya Nagar.
14. I.S.Sydney, S/O Late Sh. B.S.Sydney, R/O C-10-1/1537, Man Sarover Park, Gali No.1, Shahdara, Delhi.
15. A.M.Barua, S/O Late Sh. K.C.Barua, R/O H.No.64, Laxmi Nagar, Shahdara, Delhi.
16. S.S.Rawat, S/O Late Sh.Sangram Singh Rawat, R/O H.No.618, School Block, Shakarpur, Shahdara, Delhi.
17. R.C.Khoker, S/O Late Sh. Desh Ram, R/O H.No.31, Zia Sarai, near I.I.T., New Delhi.
18. Paul Philips, S/O Sh. C.Philips, R/O C/O Mrs. Merry M.John, 505 Media Apartment, Link House Group Housing Socy., 18, I.P.Extension, Delhi.
19. Ashok Kumar, S/O Late Sh. Ram Chander, R/O H.No. F-222, Inderpuri, Budh Nagar, New Delhi.
20. V.P.Dhingra, S/O Late Sh. K.C.Dhingra, R/O H.No.8, Gali No.4, Shastri Park, Krishna Nagar, Shahdara, Delhi.
21. Suresh Kumar, S/O Late Sh. S.K.Bhardwaj, R/O H.No.A-47, Rama Park, Uttam Nagar, New Delhi.
22. Anoop Kumar Sharma, S/O Late Sh. M.L.Sharma, R/O C.B-17, Hari Nagar, Clock Tower, New Delhi.
23. Mehak Singh, S/O Sh. Khem Chand, R/O B-185, Sadatpur Extension, Karawal Nagar, Shahdara, Delhi.
24. Virender Singh, S/O Late Sh. Swaran Singh, R/O H.No.K-3, Gali No.12, Brahmputri, Shahdara, Delhi.
25. Subhash Chand Bharatwal, S/O Sh. Chander Lal, R/O H.No.848, Gali No. 27, D.D.A. Flats, Dr. Amedkar Nagar, New Delhi.
26. Javed Hussain, S/O Late Sh. Mushtar Hussain, R/O H.No. F-75-B, Alakhnanda, New Delhi.

626

27. Ajit Singh, S/O Sh. Gurdial Singh, R/O C-104, Khajoori Khas, Gali No.9, Shahdara, Delhi.
28. Shyam Lal, S/O Sh. Deen Dayal, R/O J-2/109-B, D.D.A. Flats, Kalkajee, New Delhi.
29. Mrs. Kavita, W/O Sh. Mukesh Gupta, R/O A-42, Pushpanjali, Pitampura, Delhi.
30. Dev Dutta, S/O Sh. Jai Pal Singh, R/O L-144, Sector 9, Vijay Nagar, Ghaziabad (UP).
31. Amar Singh, S/O Late Sh. Hari Singh, R/O Village Ameenabad, P.O. Salampur Gurzar, Distt. Bulandshahar (UP).
32. Khan Chand, S/O Sh. Bish Ram, R/O G-100, Lal Kuan Badarpur, M.B.Road, New Delhi.
33. Shayam Parkash, S/O Sh. Mushi Lal, R/O H.No.D-79, Gali No.1, Mukand Vihar, Karawal Nagar, Shahdara, Delhi.
34. Bale Ram, S/O Sh. Lal Singh, R/O 13-A, L.I.G. D.D.A. Flats, Mayapuri, New Delhi.
35. Satish Chand Sharma
s/o Late Sh. Chet Ram Sharma
r/o Shahdara Fire Station
Delhi. ... Respondents in RA

(By Shri S.K.Gupta, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

This is an application filed for condonation of delay in filing the RA No.284/2000. The applicant, Government of NCT of Delhi, Respondent in the OA seeks to review the order of the Tribunal dated 6.10.1999 which stood corrected by order dated 29.11.1999 in MA No.2559/99 in the above OA. While allowing the OA the Tribunal directed as under:

"i) That the applicants shall be entitled for grant of scale of pay of R.Os., now being given to R.T.Os. i.e. Rs.380-560 (pre-revised) w.e.f. 1984 or from the date which the applicants were converted into the post of R.T.Os. whichever is later.

6
27

ii) Our orders in respect of the above shall be complied within a period of three months from the date of receipt of a copy of this order."

2. The same was corrected as follows:

"At para-3 page 4 line first of para that should be "way back in 1970-71" instead of "way back in 1963-64".

At para-7 of page 7 in line 14 at para 7 that should be "Dated 01.09.84. "Dated 31.08.94" converted T.O. into R.T.O."

3. Thus, the applicants were directed to pay the respondents the same scales as are given to RJOs w.e.f. 1.9.1984. Though this correction was made on 29.11.1999 the RA came to be filed on 7.9.2000. In order to justify the delay in filing the RA, the applicant filed MA No.2576/2000. The explanation given in this application for the delay, in the words of the deponent of the affidavit is as below:

"That the applicants have filed the above Review Application against judgement and order dt. 6.10.99 passed in O.A. No.983/95 as there are errors apparent on the face of record and the judgement has virtually been passed ex parte, because the counsel who appeared at the time of final arguments was neither authorised by the department to appear in that matter nor he took any instructions from the department and on top of it he did not even appear himself but a third counsel appeared who was neither authorised by the department nor by the court to appear thus causing great loss to the department as even the preliminary objections with regard to non maintainability of O.A. have also not been dealt with.

2. That not only the counsel who appeared in the matter did not take any instructions from the department but did not even inform the department when the matter was argued or after the judgement was delivered. Thus department had no notice of this judgement at all as they were not sent any copy of judgement by the counsel.

3. It was only when the department received a notice in C.P. that they came to know about the judgement. The department was surprised so they came to the Tribunal and made enquiries from the registry and inspected the file when all these facts came to the notice of the department. Since the matter was serious, file was referred to the Secretary Law & Judicial gave his opinion that immediate steps should be taken to bring these facts to the notice of the

7/28

court and enquiry should be conducted as to how the said counsel appeared in the case. The matter was then referred to the counsel for who advised the department to apply for the certified copy.

4. Since the copy was not a certified copy the department then applied for a certified copy to the registry on 21.8.2000. The same was received on 4.9.2000 from the registry. Copy of the judgment received from registry is being filed as Annexure RA-I."

4. The learned counsel for the applicant, Mrs. Meera Chhibber, strongly urges that the OA was not maintainable as barred by limitation. Since no objection was taken by the counsel for the applicant/Respondent in OA, the relief was granted w.e.f. 1984 though OA has been filed in 1995 and the applicants are unaware of either the posting of the case before the Tribunal or its disposal till the respondents filed the CP No.106/2000 in this OA and the copy of the order enclosed along with notice of RA has been received by the applicants on 19.4.2000. Immediately thereafter they had applied for certified copy of the order for filing RA and on receipt of the same they have filed RA on 7.9.2000. In view of the above facts brought in the affidavit filed by the applicants, the delay was neither willful nor negligent. The learned counsel for the applicants points out that the Government would have to incur heavy expenditure if the directions given in the OA have to be implemented.

5. Contesting the grounds raised the learned counsel for the respondents Shri S.K.Gupta, strenuously contends that the RA is hopelessly barred by limitation and none of the grounds urged in the MA to condone the delay are tenable and in fact, the applicants have not come forward with clean hands

✓

8/29

before the Court. They are guilty of suppression of facts. Though they are aware of the order as early as in September/October 1999, they came with the false affidavit stating that they came to know only on 19.4.2000.

6. We have given careful consideration to the above contentions. The only question that has to be seen in this case is whether the applicants are unaware of the order of the Tribunal till they came to know for the first time only on 19.4.2000 and whether the delay occurred from the date of knowledge of the order till the date of filing the RA was properly substantiated.

7. It is no doubt, true that while considering the reasons given by the Government in explaining the delay a liberal and a pragmatic approach has to be adopted and the principle of each day's delay has to be explained, cannot always be applied to the Government as legal matters have to be processed through several departments before taking a final decision. A perusal of the MA, which is supported by an affidavit deposed to by the Chief Fire Officer, no doubt, substantiates the plea that the applicants came to know about the disposal of the OA only on 19.4.2000 as it has been stated in the MA. The explanation is offered appears to be acceptable. After going through the affidavit and the contentions urged by the learned counsel for the applicant, *prima-facie*, we may have satisfied with the explanation given in the MA. But a perusal of the reply discloses an altogether different story.

OK

(9)
(30)

8. The learned counsel for the respondents brings to our attention Annexures R-1, R-2, R-3 and R-4 filed along with the reply to the MA. R-1, dated 15.10.1999, reads as under:

"With due respect it is submitted that Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi has allowed the OA No.983/95 filed by 35 R.T.O.'s.

Shri Mukesh Prakash & Others
Vs.
Govt. of NCT of Delhi and Others

It is requested to direct the authorities to comply the order as soon as possible so the above said staff will get the justice to their long pending demand. A copy of the decision (Nine Pages) are attached herewith this application for necessary action please."

9. Thus a representation was made to the Chief Fire Officer as early as 15.10.1999 enclosing a copy of the Tribunal's order requesting him to comply with the directions of the Tribunal as soon as possible as the matter was pending since long. It was clearly stated that the judgment in 9 pages have been attached along with the application for necessary action.

10. R-2, dated 18.1.2000, is another representation bringing to the notice of the Chief Fire Officer as to the representation made by the staff representative with regard to the compliance of the order and the delay caused thereon.

11. The operative and relevant paragraphs of R-3, dated 24.3.2000 read as under:

(10)
(31)

"Sir, the meetings held in your chamber, the representatives of Control Staff has raised this issue and your goodself have assured for compliance of the orders. But no action is taken so far and no arrear has been paid to us till today."

12. R-4, dated 17.4.2000, the relevant para reads as under:

"Whereas RTO Mukesh Parkash had represented alongwith other officials for compliance of orders passed by Hon'ble CAT in OA No.983/95.

The relevant Hon'ble court orders are not traceable in the Legal Cell. You are hereby directed to submit a copy of court orders as early as possible so that the Hon'ble court orders be compiled as per directions given to the Department."

13. All these annexures only go to show that in spite of the Chief Fire Officer was aware the department of the affidavit of the disposal of the OA and the order passed by the Tribunal. It has been enclosed to the representation of the respondents dated 15.10.1999. Therefore, the reason given by the applicant in the MA is wholly opposed to the facts, it is wholly incorrect to say that the applicants came to know of the disposal of the order only on 19.4.2000. He was aware of it as early as on 15.10.1999, i.e., immediately after the judgement was rendered by the Tribunal on 6.10.1999, though it was however been slightly modified in November, 1999. The learned counsel for the applicant however tries to ~~wriggle~~ out of the situation stating that the order which has been given to Chief Fire Officer on 15.10.1999 was not traceable in the office and thereafter they came to know only on 19.4.2000. But this is not the case of the applicants. The annexures filed by the respondents clearly indicate that after the order has been passed, brought to their notice and the representatives of the employees had also held

(A)

32

meetings in the chambers of the Chief Fire Officer and he in fact promised them to comply with the orders.

14. The learned counsel for the applicants also relies upon the Judgment of the Hon'ble Supreme Court in State of Haryana Vs. Chandra Mani and Others, 1996(3) SCC 132 in support of her contention that the Court has power to condone the delay in case a proper explanation given. It is true that the Supreme Court has, in the facts and circumstances of the case, condoned the delay of 109 days in filing the application as the explanation given by the concerned authorities who found satisfactory. But in the instant case we find that the affidavit filed by the applicants is incorrect and opposed to facts.

15. The above facts lead to the impression that the affidavit filed does not represent correct facts and the applicants have not come to the Court with clean hands. Therefore, they are not entitled for any indulgence from the Court.

16. MA is, therefore, dismissed and consequently RA stands dismissed, with costs of Rs.5000/-.

(GOVINDAN S. TAMPI)
MEMBER(A)

Om Rajagopal Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

(RAO)