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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1736/94

New Delhi this the 26th day of May, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

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

1. S.K. Chaudhry,
S/o Shri H.R. Chaudhry,
R/o GH-9/281, Paschim Vihar,
New Delhi.
2. A. Balagopalan,
S/o Shri K.P. Ramankutty Nair,
R/o House No. 8, Arul Nagar,
Nagercoil.

...Applicants.

By Advocate Shri M.L. Chawla.

Versus

1. Union of India,
through The Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No. 8-B, South Block,
New Delhi.

..Respondents.

By Advocate Shri M.K. Gupta.

O R D E R

Hon'ble Shri N.V. Krishnan, Vice Chairman(A):

The first applicant is an Assistant and the second applicant is a UDC in the Research and Analysis Wing of the Govt. of India. By the impugned orders dated 9.3.1994 (Annexure A) and 15.3.1994 (Annexure B), their representations dated 22.3.1993 and 17.5.1993 for extending the benefits given to J.M. Soni in pursuance of the judgement of the Tribunal were rejected. Their prayer is that the period of suspension should be treated as duty for all purposes as ordered in J.M. Soni's case.

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2. The application has been opposed by the respondents who have stated that a penalty of censure was imposed in April, 1987 and January, 1988 and the period of their suspension was treated as periods not spent on duty. The O.A. has been filed only in August, 1994. Therefore, it is hopelessly barred by limitation.

It is also pointed out that similar applications have been dismissed on two occasions, OAs 550/94 and three other OAs have been dismissed on 17.10.1994 -since reported in Kulbhushan Madan Vs. Union of India, 1995(1) CAT 343 - ^{and} O.A. 1546/89, Surendran Cheruvote Vs. Union of India, was dismissed on 24.10.1994.

3. Thereupon, the applicant filed M.A. 318/95 praying that the issue involved be referred to a larger Bench because there is a conflict of decisions rendered by Benches of the Tribunal involving the same issue. It is pointed out that in J.M. Soni's case, O.A. 866/90, (1992(2) ATJ 378) the period of suspension was directed to be treated as duty for all purposes. There were 33 persons involved and J.M. Soni's case was first decided. That decision has been followed in the following cases:

- (i) O.A. No. 2572/89, R.R. Makhija Vs. Union of India, decided on 23.10.1992.
- (ii) O.A. 2319/88, R.C. Batra Vs. Union of India, decided on 24.12.1993.
- (iii) O.A. 252/89, Balwant Singh Solanki Vs. Union of India decided on 28.2.1994 to which one of us (N.V. Krishnan) was a party.

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The two subsequent decisions referred to by the respondents were rendered by two different Benches of the Principal Bench. Their decisions are contrary to the earliest decision in J.M. Soni's case, which was reiterated in other O.As. Hence, a reference to the larger Bench is necessary.

4. Further, the advice given in the U.O. Note on 24.11.1992 by the Department of Personnel to the Cabinet Secretariat in J.M. Soni's case was produced as Annexure A-10 in the O.A. It was advised that the period of suspension has to be regulated only on the basis of the criminal trial where he was acquitted and not on the basis of the Departmental Enquiry, for holding which the suspension was not continued. It was further advised that, even if the suspension had been continued in respect of the D.E. also, the O.M. dated 3.12.1985 would apply and he would be entitled to full pay and allowances. The learned counsel has also filed M.A. 919/95 in Chamber, after the case was closed for orders, to explain how the applicant got hold of the Annexure A-10 UO Note.

5. In our view, this O.A. cannot be dismissed on the ground of limitation. It can be dismissed in limine on the ground that the decision in J.M. Soni's case will no more apply to such cases; instead, the decision in Cheruvote's case has to be followed. It is in this regard that the prayer in the M.A. is relevant.

6. We have, therefore, considered this M.A. It is, no doubt, true that in Sudhir Kumar Jaiswal's (1994(3)SLJ 1(SC)) case, the Supreme Court has, in strong terms, disapproved of the decision rendered by the Allahabad Bench in that case, even though, in two earlier

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decisions, that Bench had taken a totally different decision and the respondents before that Bench had also requested them to make a reference to a larger Bench. It is not clear from that judgement whether the Allahabad Bench considered this request or not. The Supreme Court observed that the Bench ought to have referred the matter to a larger Bench because it had taken a decision different from the earlier decision.

7. A perusal of the judgement in Cheruvote's case, annexed with the M.A., shows that such a situation did not obtain in that case. The learned counsel for the applicant, in that case was heard at length. He referred to the decision in J.M. Soni's case (ATJ 1992(2) 378) and contended that we had no alternative ^u that decision except to follow/as would be evident from paragraph 19 of that judgement. It was held in para 24 ibid that, on facts, Cheruvote's case was different from Soni's case and was distinguishable. It was then held in para 26 that the acquittal of the accused persons was not on merits but was a technical acquittal. In J.M. Soni's case this was held to be an acquittal on merits. The Bench, therefore, considered the question, whether, for this reason, reference to a larger Bench was necessary. This was answered in the negative in para 26 of the judgement, for the reasons given therein.

8. Therefore, in our view, the observations of the Supreme Court in Sudhir Kumar Jaiswal's case cannot be pressed into service.

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9. As a matter of fact, if a plausible weighty objection could be raised about the decision in Cheruvote's case, it is this that the Division Bench which heard the case, held in para 41 of its order that the judgement of the Full Bench of the Tribunal in Samson Martin vs. Union of India (1990(12)ATC 643) is no more binding. Such an objection has not been raised either in the M.A. or in the arguments of the learned counsel for the applicant, perhaps, advisedly, for, the order gives the detailed reasons for that conclusion.

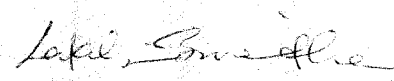
10. That leaves for consideration the Annexure A-10 U.O. Note filed with the M.A.

11. The applicant cannot get any relief on this basis because the views expressed in the Annexure A-10 U.O. Note have been negatived specifically in para 46 and sub-para (iii) of para 48 of the order in Cheruvote's case.

12. It is only necessary to add that a Full Bench of this Tribunal, sitting at Jabalpur, has rendered a decision in two O.As raising a similar question (Ram Kumar Yadav and Anr. Vs. Union of India & Ors. 1995(1)ATJ 185). That Full Bench has specifically referred to the order in Cheruvote's case and expressed its agreement with the view taken therein.

13. The learned counsel for the applicant frankly stated that if the decision in Cheruvote's case was to apply, the applicant has no case.

14. We are of the view that the order in Cheruvote's case will apply. M.A. 318/95 is dismissed. No orders are needed on M.A. 919/95. We do not find any merit in the O.A. which is dismissed.


(LAKSHMI SWAMINATHAN)
MEMBER(J)


(N.V. KRISHNAN)
VICE CHAIRMAN(A)