

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL DEPT.

NEW DELHI

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RA -213/94 in
OA-No.20/93

New Delhi, dated the 18th October, 1994

CORAM

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

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

Union of India
through Member(s)
Deptt.of Telecommunications

.... Review Applicant
(Original Respondents)

(By Advocate Shri M.M.Sudan)

V/s

Shri Devinder Singh
working as Director Telecom.(Maint.)
253, 2nd Floor, Kidwai Bhawan,
Janpath, New Delhi.

.... Respondent
(Original Applicant)

(By Advocate Shri J.K.Bali)

O R D E R (ORAL)

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

The Review applicants who are the original respondents and are hereinafter referred to as respondents have
of the Review application
filed MA 1664/94 for reconstructing the record. It is stated
that in respect of our order dated 15.4.93 in OA No.20/93, the
respondents had entrusted the matter to their counsel

Shri P.P.Khurana for filing a Review Application. A Review

Application is stated to be filed by the respondents on

9-12-1993 (filing No.9693) alongwith a MP for condonation

of delay. That RA was returned to Shri P.P.Khurana with

certain objections. About the same period there was a

change in Govt.counsel .Having ascertained that the said

R.A. had not been disposed of but was under objection, the

former counsel Shri P.P.Khurana was contacted but he did

not return the records. In these circumstances, this MA

has been filed for reconstructing the record of the R.A

afresh. Notice has been served on the respondents in

the R.A. i.e. original applicant hereinafter referred

to as applicant. We have heard the parties. In the

interest of justice MA is allowed.

2. R.A. so filed alongwith MA 1665/94 for
condonation of delay in filing that R.A. has been heard.

Both are opposed by the applicants counsel. In the view

that we are taking, the MA 1665/94 for condonation of

delay is allowed.

3. In our order dated 16.4.1993 we had directed

as follows :-

(i) If the applicant's case was considered and rejected on merits he should be informed accordingly and if, instead, the recommendations of the D.P.C. have been placed in a sealed cover, we are of the view that there was no justification for following this procedure in view of the averments made in this application- namely, that no memorandum of charges have been issued to him and therefore,

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we direct the respondents to open the sealed cover and act according to the recommendations made therein in accordance with law, within one month from the date of receipt of this order.

- (ii) If, however, the applicant has not been considered at all, the respondent is duty bound to consider the applicant's case for regularisation to the Junior Administrative Grade from 17.4.92 according to law and inform him about the result within two months from the date of receipt of this order.

That direction was given ex-parte. The OA was admitted on 5.1.1993. Despite notice no reply was filed by the respondents. The applicant filed MP 503/93 for an interim order. No reply was filed. An ad interim order was passed on this MP on 22.3.1993 and the case was posted to 2.4.1993 for further directions after hearing the respondents. The order was served Basti. Yet, none appeared for the respondents on 2.4.1993. It was adjourned to 16.4.1993 with the observation that, it should be possible to dispose of the O.A. itself. As none appeared for the respondents on 16.4.1993, the OA was disposed of by the above order. Therefore, the respondents seek of review of the earlier order.

4. It is stated in the R.A. that respondents have served Memo. of charges to the applicant on 12.7.93 which is stated to be received on 15.7.1993. For this reason it is requested

that the order be reviewed, because the order issued is stated

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to be contrary to the instructions in O.M. dated 14.9.92
of the Ministry of Personnel, Public Grievance and Pension
(Deptt. of Personnel & Training) annexed to the R.A. The
learned counsel for the respondents (i.e. review applicant)
states that two problems are involved.

- 1) According to the instructions, the sealed cover~~z~~
can be opened only after final orders are passed
in the D.E. exonerating the employee.
- ii) Even if the D.P.C. has recommended that the
employee is fit for promotion, para 7 of the
O.M. dated 14.9.92 states as follows:-

" A Government servant, who is recommended for
promotion by the Departmental Promotion Committee
but in whose case any of the circumstances mentioned
in para 2 above also after the recommendations of
the DPC are received as if his case had been placed
in a sealed cover by the DPC. He shall not be promoted
until he is completely exonerated of the charges
against him and the provisions contained in this OM
will be applicable in his case also."

Para-2 referred to therein is as follows:-

" At the time of consideration of the cases of
Government servants for promotion, details of
Government servants in the consideration zone
for promotion falling under the following
categories should be specifically brought to the
notice of the Departmental Promotion Committee:-

- i) Government servants under suspension.
- ii) Government servants in respect of whom a charge
sheet has been issued and the disciplinary
proceeding are pending : and
- iii) Government servants in respect of whom
prosecution for a criminal charge is pending."

5. We have carefully considered the matter. The
information now furnished in the R.A. was not before us.

Therefore, it cannot be said that there is any error

apparent on record in our order. Respondents have no case

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incorrect. In particular, we notice that the applicants

avermment that a memo of charges had not been issued, ^{stands} confirmed. The memo of charges was issued only on 15-7-1993. Despite notice of the OA and notice of MP 503/93, which was served dasti, respondents did not put in appearance or file any reply. Therefore, even if we had taken judicial notice of the O.M. dated 14.9.92, we could not have passed any other order, in the absence of any information which was available to the respondents only. Respondents have also no case that the applicant had suppressed any information available with him and has thus mislead the court. Therefore, the R.A. has no merit..

6. Learned counsel for the Review Applicant, however, submits that keeping in view ^{of} the judgment of Full Bench of this Tribunal in John Lucas and Another v/s Addl. Chief Mechanical Engineer S.C. Railway and others 1987(3) ATC 328 we should consider taking the order in review. We have seen that judgment. As mentioned in para 1 of that judgment the only question that was decided was whether a fresh OA could be filed by a person to set aside the final judgment or order already delivered on an earlier application, to which he was not a party, or whether the proper course was only to

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OA might affect a third person, who was not a party to that O.A. In that circumstances, the third party cannot file a fresh application. He can only file an application seeking review of the earlier order. Learned counsel for the respondents specially draws our attention to para 6 of the judgment that this Tribunal is not bound by the procedure laid down in the Code of Civil Procedure. He, therefore, contended that we may review an order even if the condition specify in the C.P.C. are not fully specified.

7. We have considered this prayer. Section 22(3) of the Administrative Tribunals Act, 1985 states that in respect of review we have the same powers as are vested in a Civil Court under the Code of Civil Procedure. Order XLVII of the C.P.C. permits review when any new fact or evidence is discovered or on account of an error apparent on record or "for any sufficient reason." Obviously that unspecified reason must be as weighty and as important as the first two reasons. In the present case, we find that the only reason why an ex parte order was passed against the respondents was ^{due} to their laches. In our view, no injustice is done to the respondents if the order is not

reviewed. They can still continue with the disciplinary

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Enquiry proceedings against the applicant. The reasons given
are sufficient for a review.

8. In the circumstances, there is no merit in the
Review application. Accordingly it is dismissed.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member(J)

N.V. Krishnan
18/10/14
(N.V. Krishnan)
Vice Chairman (A)

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