

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

R.A. NO. 41/95  
in  
O.A. NO. 2197/93  
&  
M.A. 407/95  
&  
M.A. 746/95

New Delhi this the 10th day of April, 1995.

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

Hon'ble Dr. A. Vedavalli, Member(J).

Union of India through  
Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.

..Review Applicant.

By Advocate Shri V.S.R. Krishna.

Versus

Shri Sudarshan Kumar Sardana,  
Retired ASW,  
R/o 25/17, Tilak Nagar,  
New Delhi.

..Respondent.

ORDER

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

O.A. 2197/93 was disposed of by an order dated the 3rd March, 1994 by a Bench to which one of us (Shri N.V. Krishnan, Vice Chairman(A)) was a party. The respondents therein have filed this Review Application which has been heard by this Bench on the directions of the Hon'ble Chairman. The Review Applicants - Respondent for short - have stated that the order dated 3.3.1994 was passed ex-parte and it suffers from errors apparent on the record which necessitate review. MA 407/95 has been filed in the RA to take on record the two judgements of this Tribunal as Annexure-1 and Annexure-2 stating that the decisions in those judgements would help to show that the decision rendered on 3.3.1994 suffers from errors. M.A. 746/95 has also been filed to amend the R.A. after it was heard in the first instance. The purpose of the amendment is to introduce additional grounds. Both the M.As are allowed.

2. We have heard the learned counsel. If an ex-parte order is passed against the respondents, it is open to them to file an application for restoration under Rule 16(2) of the Central Administrative Tribunal (Procedure) Rules, 1987 - Rules for short. In the M.A. 746/95, an additional ground has been raised based on Rule 16(2). The learned counsel for the respondent contended that Rule 16(2) is attracted in this case. He submits that in the O.A. the applicant has impleaded only the Union of India through the Ministry of Defence as official respondent. The applicant had filed M.A. 3599/93 for condonation of delay. Notice was directed to be issued to the respondents and the case was listed on 9.2.1994. It is stated that the notice was received only on 7.2.1994. As this respondent was not directly concerned with the matter, it was transmitted to the concerned Head of the Department, i.e. The Engineer-in-Chief's Branch, Army Headquarters for necessary action. This was received by the Head of the Department on 11.2.94 by which time the hearing had already taken place on 9.2.1994. The notices were not issued for the subsequent hearing on 18.2.1994 and 3.3.1994 and ex-parte orders were passed on 3.3.1994. It is, therefore, submitted that the respondent was prevented from appearing and there was sufficient cause for this purpose and hence the order should be recalled and the case should be restored under Rule 16(2) of the Rules.

3. In our view, this case does not fall within the purview of Rule 16(2) of the Rules. Admittedly, the respondent received a notice on 7.2.1994 for the hearing on 9.2.94. Whatever may be the procedure followed by the review applicant, nothing prevented an official of the Ministry to appear before the Tribunal and seek further time, on the ground that the real authority

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concerned with the O.A. has to be ascertained and that the application suffers from non-joinder of necessary parties. That was not done by this respondent. It is further admitted that the Head of the Department got a copy of this notice from the respondent on 11.2.94. Even then that authority did not care to approach the Registry for information as to what has happened. What has happened has already been mentioned in our order dated 3.3.1994. No notices were issued for the hearings on 8.2.1994 and 3.3.1994 because we felt that having received a notice, an appearance should be made by the respondent, even if it is belated. Hence, two additional opportunities were given for his appearance on 18.2.1994 and 3.3.1994. It is only when none appeared on 3.3.1994 that ex-parte orders were passed.

4. In the circumstance, we find that the respondent was served in time about the hearing on 9.2.1994 and nothing prevented this respondent or any other party to appear before us before 3.3.1994. Hence, Rule 16(2) of the Rules is not applicable.

5. The main ground of the respondent is that the order relates to a stale claim and, therefore, the application should have been rejected. It is also stated that the judgement in one case does not give rise to any cause of action to any other employee. Thirdly, other similar applications are pending which require adjudication. Hence, these are errors apparent on the record which necessitate revision. In our view, the respondent not having appeared, cannot now complain that the many aspects referred to in the R.A. were not considered by us. They were not considered for the simple reason that the respondent did not care to enter appearance and present these facts before us. These, therefore, do not constitute errors apparent on the face of the

record nor do the additional judgements filed with the  
M.A. 407/95 alter that position.

6. In the circumstance, we find no merit in the  
R.A. It is dismissed.

*A Veda Valli*  
10/4/95  
(DR. A. VEDAVALLI)  
MEMBER(J)

*N.V. Krishnan*  
10.4.95  
(N.V. KRISHNAN)  
VICE CHAIRMAN(A)

'SRD'