

Q

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH
NEW DELHI.

RA No. 257/93
MP No. 2292/93 in
OA No. 444/86

Date of decision: 8.10.1993

Union of India & anr.

Applicants

vs.

Shri Pawan Kumar Tyagi

Respondents

For the Review Applicants ... Mrs. Avnish Ahlawat,
Counsel.

For the Respondent .. Dr. D.C. Vohra, Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE-CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A)

JUDGEMENT (ORAL)

(BY HON'BLE MR. JUSTICE S.K. DHAON, VICE-CHAIRMAN)

This Review application, at the instance of the Union of India through Chief Secretary, Delhi Administration and the Secretary, Department of Medical and Public Health, Government of National Capital Territory of Delhi, stems from the judgement dated 6.7.1992 delivered by a Division Bench of this Tribunal (Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman & and Hon'ble Mr. I.P. Gupta, Member(A)) in OA No. 444/86.

By the said judgement, this Tribunal, in substance, directed the respondents to the OA to give salary to Shri Pawan Kumar Tyagi in the revised pay scale. In OA 444/86, initially, the Delhi Administration (through the Administrator) Union Territory of Delhi was cited as the sole respondent. Upon an application filed by the respondent (Sh. P. K. Tyagi), on 28.1.1987, this Tribunal directed the impleadment of 4 parties as under:-

- (1) Delhi Administration through the Chief Secretary
- (2) Union of India through the Secretary, Ministry of Home Affairs

(3) Director General of Health Services

(4) Delhi Administration through
Secretary(Services)

Notices were duly issued to the newly added respondents and they were served with them.

3. Respondent(Sh.P.K.Tyagi) felt that the directions given by this Tribunal were not being obeyed. He, therefore, preferred a Contempt Petition in this Tribunal on 10.4.1993. In that petition, the Union of India through Shri R.K.Thakkar,Chief Secretary & Administrator was cited as the sole respondent. Notice of the CCP was served on the alleged contemner on 27.4.1993. It appears that no one appeared on behalf of the alleged contemner and, therefore, on 13.7.1993, this Tribunal directed that the alleged contemner should appear in person. This notice was issued by the registry on 16.7.1993 and, on a perusal of the relevant record, it appears that the same was served on the person concerned on 21.7.1993.

4. On an examination of the record, we find that/copy of the judgement given in the aforesaid OA was sent by the registry to the learned counsel representing the respondents in the OA and the same was received by the learned counsel on 13.7.1992.

5. This review application was presented in this Tribunal on 24.8.1993. The averments in the review application, as material and as verified by Shri R.S.Sethi,Secretary(Medical & Public Health) are these. In OA 444/86, the only respondent was the Administrator through the Deputy Secretary (Services). Neither the Union of India through Chief Secretary of Delhi Administration nor Secretary Medical and Public Health,Delhi Administration

Were made parties and the result was that the departments who were competent to deal with the matter to process the revision of scales and ultimately sanction the scales were not made aware of the case. Keeping in view these averments, we issued notice on the Review Application and also stayed the operation of the judgement given by this Tribunal in the OA.

6. In the additional affidavit filed by Shri Sethi, in the Review Application, the averment, in substance, is that what was meant to be conveyed in the RA was that since the Union of India through the Secretary, Ministry of Health and Family Welfare which is the controlling Ministry in matters to which the OA pertain had not been impleaded as one of the respondents, the judgement given by this Tribunal in the OA is a nullity.

7. We have heard this Review application at length. Mrs. Avnish Ahlawat, learned counsel for the applicants has made a statement at the Bar that the application is being pressed only on behalf of the Secretary, Department of Medical and Public Health, Government of National Capital Territory of Delhi. She has urged that the judgement under review is a nullity because the Delhi Administration was not impleaded as respondent through the Secretary, Department of Medical and Public Health of that Administration. She has also urged that the Union of India through Secretary, Ministry of Health and Family Welfare should have been cited as one of the respondents. She submits that the aforesaid two parties were necessary parties to the OA and in their absence no adjudication much less a binding adjudication

could take place. We are refraining from expressing any opinion on the tenability of this submission. We are satisfied that the said contention is not available to the Secretary, Department of Medical and Public Health of the Government of National Capital Territory of Delhi as he was sufficiently represented in the OA through the Delhi Administration.

8. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, provides that an application for review shall be filed within a period of 30 days from the date of receipt of a copy of the order sought to be reviewed. As mentioned above, a copy of the judgement was served upon the learned counsel for the respondents in the OA in the month of July, 1992 itself. It may be noted that the review application was presented in this Tribunal on 24.8.1993. It may also be noted that the notices in the contempt petition were served on Shri R.K.Thakkar, Chief Secretary and Administrator on 27.4.1993. It may also be noted that the notice issued by this Tribunal directing Shri R.K.Thakkar to appear in person was duly served on 21.7.1993. We are not convenience that the respondents in the OA acquired knowledge of the judgement of the Tribunal on 6.8.1993 for the first time. No satisfactory explanation has been offered for the delay in the filing of the Review Application. No case, therefore, has been made out for accepting the application seeking condonation of delay. The Review Application, therefore, is liable to be dismissed as barred by time as well.

9. The material fact that in the OA,

Sug

apart from, the Delhi Administration (through the Administrator) Union Territory of Delhi four others were cited as respondents, was not mentioned in the review application. Curiously enough, the material fact that the contempt proceedings were pending and notice directing Shri R.K.Thakkar to appear in person had been issued was also suppressed in the review application. Had either of the two facts been mentioned, probably we would not have stayed the operation of the judgement given by this Tribunal. Therefore, there appears to be some force in the contention of the learned counsel appearing for Shri P.K.Tyagi that the applicants in the RA did not come with clean hands.

10. It is unfortunate that an officer of the rank of Secretary, Department of Medical and Public Health verified the contents of the Review Application containing incorrect facts. Still more, it is distressing to note that, even in the additional affidavit filed, an attempt has been made to justify the averments made in the review application rather than expressing regret ~~for~~ to the lapse committed. Taking the totality of the facts and circumstances of this case into account, we are convinced that we should award cost to Shri P.K.Tyagi. Accordingly, we direct the applicants in the RA to pay a sum of Rs.500/- as cost.

11. The review application is dismissed with costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL) 4/7/93
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)