

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Order: 23.4.93

RA 56/93
MP 591/93 in
OA 172/86

SHRI GULAB CHOUDHARY VS. UNION OF INDIA

O R D E R

This is a Miscellaneous Petition bearing No.591/93, filed by Shri Gulab Choudhary, Dy. Surveyor General, Survey of India, for condonation of delay in filing Review Application bearing No.56/93 arising out of judgement in OA 172/86.

2. None appeared for the review applicant even on the second call, when the case was listed on 22.3.93.

3. In OA 172/86, the applicant had prayed for the following reliefs:

"(i) The promotion of all these Corps of Engineer Officers who were brought in Survey of India later than the petitioner in the same grade (as Dy. Superintending Surveyor), from the post of Superintending Surveyor to the post of Dy. Director be set aside, and no further civil promotion should be given to these Corps of Engineer Officers in Survey of India. Further, on the date of his appointment as Dy. Superintending Surveyor i.e. on 14.4.66 the seniority, which could not be disturbed by bringing candidates from other sources as this violated the fundamental (service) right of the petitioner guaranteed to him under Art.14 and 16 of the Constitution.

That in accordance with the judgement delivered by the Hon'ble Supreme Court in COL. A.S. Iyer & Ors. Vs. V. Balasubramanyam & Ors. (AIR 1980 SC 452), the Corps of Engineer Officers in Survey of India continued to be the members of the Armed Forces and that they did not become the members of Survey of India service. Therefore, they could not be considered for promotion in Survey of India posts as this is violation of Army Act, army being a distinct service.

(29)

(ii) The respondent - Union of India should be directed not to make the combined seniority list of the Corps of Engineers Officers in Survey of India along with the applicant because in view of the holding of the Hon'ble Supreme Court in Col. A.S. Iyer's case vide AIR 1980 SC 452 the civilian and army officers in Survey of India are two separate classes of employees and that they do not get fused into one common service."

4. The Principal Bench of the Tribunal, after hearing the learned counsel for the respondent, and perusing the records, (the applicant was not present), dismissed the application by their order dated 1.8.91.

5. The applicant thereafter filed this Review Application on 6.9.91, citing various rulings in support of his prayer. In the MP, explaining the reasons for delay, the applicant stated that he filed the OA in the Principal Bench, New Delhi, in 1986, when the petitioner was posted at Patna and there was no Bench of the Tribunal set up at that time there. As he belongs to ^{an} All India Transferable Service, he did not apply for the transfer of the case to Patna Bench of the Tribunal when the same was subsequently set up there. On 31.7.87, he was transferred to Bhubaneshwar and prayed for transfer of the case to the Cuttack Bench of the Tribunal, but the same was disallowed. On 20.3.91, the petitioner appeared for final hearing at Delhi but the hearing was adjourned, and thereafter, the petitioner learnt at Bhubaneshwar that the case had been heard *ex parte* in his absence around 29th July/1st August, 1991. He immediately applied for a copy of the judgement on 7.8.91, which ultimately

reached him on 28.8.91 after being redirected from his Patna address, and he filed his Review Application on 2.9.91 at his earliest, which was received in the Principal Bench on 6.9.91.

6. It is noted that the RA remained under objection, and after removal of the same the RA was re-filed on 9.2.93 with MP 591/93.

7. Under Order XLVII Rule 1 of the CPC a decision/judgement/order of the Tribunal can be reviewed only;

- (i) if it suffers from an error apparent on the face of the record; or
- (ii) it is liable to be reviewed on account of discovery of any new material or evidence which was not within the knowledge of the party or could not be produced by him at the time the judgement was made, despite due diligence; or
- (iii) for any other sufficient reason, construed to mean "analogous reason".

8. The applicant claims that *It is erroneous to hold that* the validity of the relevant rules has not been challenged. In the OA itself it had been shown how the various applications of the rules like convening of combined DPC for army and civilian officers like the applicant, preparation of common seniority list etc. has violated the fundamental right of the applicant and thus the attack of rules 2,5 and 5-A of the Survey of India (Recruitment from Corps of Engineer Officers) Rules, 1950, and Rule 22 of the Survey of India Group-A (Recruitment) Rules, 1960 was implied, and

these rules had been specifically challenged in the rejoinder. Hence non-investigation of the grievances of the petitioner, in the instant case, was an error apparent on the face of the record and thus review of the judgement was warranted in this case.

9. It is well settled that the rejoinder does not form a part of the pleadings, and is only in the nature of reply to the points raised in the counter-affidavit. Hence to state that the rules have specifically been challenged in the rejoinder does not nullify the findings arrived at in the judgement dated 1.8.91 in OA 172/86 that in the relief sought for by the applicant he had not prayed for quashing any of the rules, and hence it must be held that there has been no error on the face of the record.

10. Under the circumstances, the prayer for review of the judgement dated 1.8.91 in OA 172/86 is rejected, and the MP for condonation of delay in filing the Review Application is dismissed as infructuous.

Anil Agarwal
(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)