

18

Central Administrative Tribunal  
Principal Bench, New Delhi

---

Regn. No. RA- 70/88  
OA-1271/87

Date: 28/03/1989.

Shri O.P. Gupta ..... Petitioner

Versus

Union of India & Ors. .... Respondents

For the Petitioner ..... Shri K.N.R. Pillai, Advocate

For the Respondents ..... Shri O.N. Moolri, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Shri D.K. Chakravorty, Administrative Member.

(Judgement of the Bench delivered by Hon'ble  
Shri P.K. Kartha, Vice-Chairman)

This review petition has been filed on 6th June, 1988 by the original respondents praying that this Tribunal's order dated 16.5.1988 may be set aside/reviewed and that the case may be heard on merits after affording an opportunity to the respondents to file their counter-affidavit. The respondents have also filed their counter-affidavit to the original application.

2. The OA-1271/87 was filed in this Tribunal on 7.9.1987. The O.A. was admitted on 11.9.1987. Thereafter, a notice was issued to the respondents on 15.9.1987 and the same was received by them on 23.9.1987. Subsequently, on 12.1.1988 the Tribunal directed that the respondents be given intimation under registered cover to the effect that the case has been listed for final hearing on 16th March, 1988. The registered notice was issued and received by the respondents. On 16.3.1988, noting that there was no appearance on behalf of the respondents, the Tribunal directed to issue fresh notice for 20.4.1988 giving a final opportunity to the respondents to file counter-affidavit within four weeks, failing which the case was to proceed without the counter-affidavit. This

On

notice was issued on 18.3.1988 and received by the respondents on 21.3.1988. Thereafter on 2.5.1988, the learned counsel for the applicant was heard and the judgement was reserved to be pronounced on 16.5.1988.

3. In para.2 of our judgement dated 16.5.1988, it has been observed that despite notice and several opportunities given, the Union of India represented by the Secretary, Railway Board and the Divisional Railway Manager, Delhi Division, Northern Railways, who have been impleaded as the respondents, did not appear before us nor did they file any counter-affidavit or written submissions.

4. The present petition has been filed to set aside/review our order dated 16.5.1988. It has been stated that the respondents were served the notice of the original application for 30.11.1987 and they nominated Shri J.S. Shingal, Advocate, as the Counsel to conduct the case on 29.9.1987/1.10.1987. The said counsel, however, did not appear and resigned from the panel which information was received by the respondents on 23.10.1987 on the return of the brief by him. Thereafter, the respondents nominated another counsel, Shri Ranvir Singh Renu, to conduct the case and sent the brief of the case to him. The said counsel did not attend to the case and he did not inform the department about the conduct of the case or the proceedings in the case and the respondents were left in the dark about the conduct and the proceedings of the case. The respondents learnt about the ex parte order only on receipt of the judgement on 24.5.1988 and they had no information about the non-appearance or non-filing of the counter-affidavit by its counsel.

*On*

5. Thus, the ground taken in the present petition is that it was due to the negligence on the part of the counsel engaged by the respondents that they could not enter appearance and file the counter-affidavit.

6. The original applicant has filed a reply to the present petition wherein it has been stated that a respondent against whom an ex parte judgement has been granted, has three remedies open to him, viz., (i) appeal (ii) review application, and (iii) application for setting aside the judgement. The respondents have mixed up the (ii) and (iii) remedies and filed an M.P. for setting aside the review of the judgement. The respondents have to confine the application to one remedy. For review, no case has been made out at all. There is no error of law apparent on the face of the record. Therefore, a review application is not maintainable.

7. As regards the question of setting aside of the judgement, the original applicant has stated that the respondents have not disclosed the full facts and have tried to shift the blame on his client for their own negligence. Three notices had been received by the respondents from the Tribunal, but this has been suppressed while filing the present application. As regards shifting of the responsibility for the negligence on the counsel engaged by them, the original applicant has contended that this would not constitute sufficient cause for setting aside the judgement. Nothing prevented the officials of the respondents from attending the Court in spite of repeated notices.

8. We have carefully gone through the records of the case and have heard the learned counsel for both the

*Ag*

parties. Shri K.N.R. Pillai, the learned counsel for the original applicant, relied upon the decision of the Madras High Court in Siddayya Vs. Ambu Nair, A.I.R. 1925, Madras 1264 and of the Andhra Pradesh High Court in V. Veeranna Vs. B.K. Sastrulu, A.I.R. 1957, Andhra Pradesh 519. In the instant case, we are of the opinion that the respondents had adequate notice about the filing of the application by the original applicant and even if the counsel engaged by them were negligent, nothing prevented the officers of the respondents from pursuing the case by putting in appearance on the dates of hearing and making the appropriate submissions representing their case. In the facts and circumstances of the case, we are satisfied that the respondents have not shown sufficient cause for setting aside our judgement dated 16.5.1988. We are, therefore, of the opinion that the present petition for setting aside/review of our judgement dated 16.5.1988 is not maintainable in law.


9. We have also heard the learned counsel for the respondents at length on the merits of the case and have gone through the counter-affidavit filed by the respondents. The relief claimed by the original applicant was that he was entitled to be regularised as Conductor from 24.2.1983 on completion of 18 months of continuous service and to be included in the seniority list on the basis of such a regularisation and thereafter to be included in the promotion list of T.T.I. in accordance with his due seniority. On a careful consideration of the records of the case, we had come to the conclusion that the applicant should be deemed to have been regularised as


a

Conductor from 24.2.1983, i.e., the date of his completion of 18 months' continuous service in the grade with consequential benefits of seniority and further promotion and that he should also be considered for promotion as T.T.I. from the date his immediate junior, on the basis of length of service, was so considered and selected. If considered fit for such promotion, he should be promoted w.e.f. the date his junior was promoted with all consequential benefits. No good grounds have been made in the counter-affidavit filed by the respondents warranting a review of our judgement.

10. In case the review applicant were not satisfied with our judgement dated 16.5.1988, the proper course for them would have been to prefer an appeal against the same and not to file the present petition for setting aside/ review of our judgement.

11. In the light of the foregoing, R.A.-70/88 in OA-1271/87 is rejected with the direction to the respondents that they should comply with the directions contained in our judgement dated 16.5.1988 within a period of one month from the date of communication of a copy of this order. The parties will bear their own costs.

  
(D.K. Chakravorty)  
Administrative Member

  
(P.K. Kartha)  
Vice-Chairman(Judl.)