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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

Dated: this the 1st day of April, 1997.

R.A.No.278/94

IN
MA 2202/94
MA 2203/94
O.A. 2214/89.

HON'BLE MR.S.R.ADIGE MEMBER(A).

Union of India & others.....Review Applicants.

(By Advocate: Shri R.L.Dhawan). (Respondents in OA)

Versus

Binda & others Respondents.

(By Advocate: Shri B.S.Mainee). (Applicants in OA).

ORDER

BY HON'BLE MR.S.R.ADIGE, MEMBER(A).

Review applicants(UOI & others) have sought review of judgment dated 13.5.94 in OA No.2214/89 Shri Binda & another Vs. UOI.

2. In that OA it had been prayed that Qr. No.39-A/1 Shri Ram Road, Railway Colony, Delhi which stood allotted to applicant No.1 be regularised in applicant No.2's name consequent to applicant No.1's retirement w.e.f. 31.10.85. On 6.7.90 applicant's counsel was present, but none appeared for respondents. It was noted that pleadings were complete and the case was ordered to be listed for regular hearing, in its turn. On 2.5.94 it was listed for regular hearing, but as it could not be reached it was ordered to be kept on daily board. It again came up on 3.5.94 on which date applicants' counsel was again present, but none appeared for respondents. In absence of respondents either in person or through counsel, the OA was heard exparte on 3.5.94.

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3. It is contended in the RA that applicant No.2 (Respondent in RA) was working as a substitute Khalasi on the date from which regularisation is sought, and hence was not eligible for out of turn allotment/regularisation in term of Railway Board's instructions dated 15.3.91 (Annexure-A3) and various rulings of the Tribunal which could not be produced at the time of hearing, despite due diligence. It is also contended that the quarter in question was a Type II quarter, while applicant after his regularisation as Khalasi on 11.5.87 was eligible only for a Type I quarter. It is also contended that there is an error apparent on the face of the record in as much as the quarter was directed to be regularised in the name of applicant No.2 w.e.f. 1.1.86, but in terms of Railway Board's instructions dated 15.1.90 the quarter has to be regularised from the date of retirement i.e. 31.10.85 and not from 1.1.86.

4. Under Section 22(3)(f) A.T. Act read with Order 47 Rule 1 CPC, a judgment/order/decision of the Tribunal can be reviewed only if

- i) It suffers from an error apparent on the face of the record;
- ii) new material or evidence is discovered which was not within the knowledge of the parties or could not be produced by that party, at the time the judgment was made, despite due diligence; or
- iii) for any sufficient reason construed to mean analogous reasons.

5. In the present case, as respondents' counsel failed to appear during hearing, despite this being

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a very old case, and the respondents' instructions dated 15.3.91 as well as the judgments cited in the RA were never brought to the Tribunal notice at the time of hearing, nor indeed was it pointed out that the said quarter was a Type II quarter, it cannot be said that the review applicants exercised due diligence within the meaning of (ii) above. By the impugned judgment, the quarter was directed to be regularised in the name of Applicant No.2 w.e.f. 1.1.86 because Applicant No.1 had retired on 31.10.85 and as per rules he was entitled to retain it for two months after retirement of Applicant No.1i.e. upto 31.12.85 on payment of normal rent. Hence no error, much less one apparent on the face of the record, has been committed either.

6. In the impugned judgment, reliance was placed upon the Tribunal's judgment dated 24.5.93 in OA No.281/90 Atma Ram Vs. UOI which itself was based upon a number of other judgments of the Tribunal wherein it has been held that even if the son was not regular employee, if his father had superannuated and in the event he had acquired temporary status and was living with his father with the permission of the authorities for more than 6 months, he was entitled to regularisation of the quarter.

7. At no stage, did the respondents point out that the said judgment in Atma Ram's case had not become final.

8. In the result, as none of the ingredients u/O 47 Rule 1 CPC have been satisfied, the RA is rejected.

S.R. Adige
(S.R. ADIGE)
MEMBER(A).