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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA No.445/93 in OA No.1443/89

NEW DELHI THIS THE 20th DAY OF OCTOBER, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri S.K.Verma

Applicant

BY Advocate Shri R.A.Yadava

vs.

Union of India & ors.

Respondents

BY Advocate Shri P.P.Khurana.

ORDER

JUSTICE S.K.DHAON:

This an application on behalf of the Union of India & others seeking the review of our judgement dated 21.7.1993 given in OA No.1443/89.

2. During the pendency of the disciplinary proceedings initiated against the applicant(Sh.S.K.Verma), OA No.1443/89 was filed. This Tribunal(Hon'ble Mr.P. Srinivasan, Member(A) & Hon'ble Sh.T.S.Oberoi, Member(J)) on 21.7.1989, by means of an interim order, restrained the relevant authority from proceeding with the enquiry. That order continued to operate till 21.7.1993. During the pendency of the Original Application, the applicant (Sh.S.K.Verma) retired from service. This Tribunal took the view that the disciplinary proceedings could not go on under Rule 9(2) of the Central Civil Services(Pension) Rules,1972(the Rules) without any order of the President. It accordingly directed that the punishing authority shall forward the matter to the President under Rule 9 for the passing of the necessary order.

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3. We issued notice to the applicant(Sh.S.K.Verma). A counter-affidavit has been filed on his behalf. Counsel for the parties have been heard. For reasons stated hereinafter, this review application deserves to be allowed in so far as it pertains to the direction given by us that the disciplinary proceedings can continue as against the applicant only after obtaining the orders of the President.

4. Rule 9(2)(a) of the Rules together with the proviso thereto is relevant and and the said provisions are extracted:

" The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President."

We clearly misread the aforequoted provisions in taking the view that for the purpose of continuing with the departmental proceedings after retirement of the applicant from service, some sort of an order by the President was required to be passed. The proviso, merely states that the findings recorded on the conclusion of the departmental proceedings shall be submitted by the authority concerned along with its report to the President if the departmental proceedings have been instituted by an authority subordinate to the President. In the proviso, under consideration, there is not even a whisper that before the culmination of the departmental proceedings, the authority is required to submit any papers for orders of the President. The question of submitting a report

along with the findings can only arise if the departmental proceedings have concluded. The position, therefore, is clear that before the conclusion of the departmental proceedings, the President does not come into the picture at all.

5. In **D.V.KAPOOR Vs. UNION OF INDIA AND OTHERS** ((1990)4SCC 314), it was observed:

"....Therefore, merely because the appellant was allowed to retire, the government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto. The disciplinary proceedings initiated under the Conduct Rules must be deemed to be proceedings under the rules and shall be continued and concluded by the authorities by which the proceedings have been commenced in the same manner as if the government servant had continued in service. The only inhibition thereafter is as provided, in the proviso namely: "provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President ". That has been done in this case and the President passed the impugned order. Accordingly we hold that the proceedings are valid in law and they are not abated consequent to voluntary retirement of the appellant and the order was passed by the competent authority, i.e. the President of India ."

6. Their Lordships were considering Rule 9 of the Rules and made the aforequoted observations in the said provisions. We have, therefore, no hesitation in taking the view that we committed not only an error but also an error apparent on the face of the record by taking the view ^{that} / even for the purpose of continuing with the departmental under Rule 9(2) of the aforesaid Rules an order of the President was necessary. We, therefore, direct that that the departmental proceedings may be continued under Rule 9(2) as against the applicant (Sh.S.K.Verma), if the authority concerned so desires.

7. On behalf of the applicant, it is vehemently contended that this review application should be thrown out as barred by time.

8. This review application is supported by a Misc. Application seeking the condonation of delay. The material averments in the Misc. Application are these. A copy of the judgement dated 21.7.1993 was received by the counsel for the Union of India on 6.8.1993. It was sent to the department on 17.8.1993 by post. However, the same was not received and on being contacted, the counsel supplied another copy on 13.9.1993 by which time, the time for filing the review application had already expired on 5.9.1993. A Misc. Petition was filed on behalf of the Union of India on 23.9.1993 praying that the time for complying with the directions given by this Tribunal in its judgement dated 21.7.1993 may be extended by two months. During the course of the arguments, it transpired that the appropriate remedy of the Union of India was to file a review application. Thereafter, a thought to that idea was given. It is stated that the delay is not intentional but has occurred on account of the departmental procedures involved in taking a decision to file a review application or a special leave petition.

9. The contents of the Misc. Application have been verified by a responsible officer, namely the Additional Collector(P&V) Customs and Central Excise Collectorate, New Delhi. We see no reason to disbelieve the version of the aforesaid officer. We are not oblivious of the view taken by the Hon'ble Supreme Court that in the matter of limitation concerning a Government department, a little laxity may be shown by the courts. Taking the totality of the facts and circumstances of the instant case into account, we consider this a fit case where delay in filing the review application should be condoned. We accordingly, condone the delay.

10. This review application is allowed. Judgement

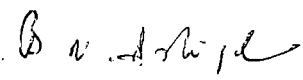
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dated 21.7.1993 given in OA No.1443/89 is set aside.to the extent stated above.

11. There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


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

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