

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

NEW DELHI.
R.A.NO.403/1993. in
O.A.No.2103 of 1989

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New Delhi: this the 16th day of December, 1996.

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

HON'BLE DR.A.VEDAVALLI MEMBER(J)

D.M.SINGH,
S/o Late Shri Yudhister Singh,
R/O WZ-1024/A-1, Nangal Raya,
New Delhi

Employed as

Upper Division Clerk (UDC)
Department of Telecom.
Northern Telecom Region,

(MTNL)

Office of the Area Manager (West),

Admn. Blk. RGN.T.E. (Complex),
Shivaji Marg,
New Delhi

.....Applicant.

(By Advocate: Shri B.B.Raval)

Versus

1. Union of India,
through the Secretary,
Department of Telecom.,
Sanchar Bhawan,
Ashoka Road,
New Delhi. 110001.
2. The Chief General Manager (Mtce).,
Department of Telecommunications,
Northern Telecom. Region,
Kidwai Bhavan,
New Delhi. 110001.
3. Shri G.K.Saran,
Director (Sat. Mtce & Admn),
Department of Telecommunications,
Kidwai Bhavan,
New Delhi. 110001.
4. The Area Manager (West),
Mahanagar Telephone Nigam Ltd.,
Admn. Blk. RGN T.E. (Complex)
Shivaji Marg,
New Delhi. 110027.
5. Shri P.L.Malhotra,
A.E. (Cable), MTNL.,
Janakpuri Telephone Exchange,
Janakpuri,
New Delhi, 110050.
6. Shri Darshan Lal,
the then Commercial Officer,

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ADE (MSE-II)
Department of Telecommunications,
Sanchar Bhavan,
Ashoka Road,
New Delhi. 110001

.....Respondents

(By Advocate: Shri A.K.Sikri , Sr.counsel
with Shri V.K.Rao)

ORDER

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

Heard.

2. At the outset we note that certain portions of the RA are couched in language which is offensive and in bad taste, and is calculated to lower the Hon'ble Members of the Tribunal in the eyes of the public. For instance in paragraph 3 of the RA, it has been stated

"That the applicant most respectfully and yet regretfully submits that the Hon'ble Member, who has delivered the judgment was probably not feeling well during the course of the hearing and was found most of the time dozing and had taken hardly any notes during the detailed hearing of the case and the other Hon'ble Member who was thoroughly active and interacting with the counsels and taking detailed notes has not delivered the judgment. Under the circumstances, the Hon'ble Member who delivered the judgment has not been able to appreciate the facts/arguments and this itself is the greatest error apparent on the face of the records. Because of this, the following errors have crept in th judgment delivered by the Hon'ble Member on the face of the records.."

3. Again in the middle of page 7 of the RA it has been alleged that the Hon'ble Member was not perfectly attentive during the course of hearing. In the middle of page 10 of the RA it is alleged that certain facts escaped the attention of the

Hon'ble Tribunal, because " no notes were taken by the Hon'ble Member who had delivered the judgment probably because he was unwell and therefore he came to a perverse conclusion." At page 13 it has been stated " the counsel for the applicant was also questioned at length by the Hon'ble Member who took the notes, but that Hon'ble Member has not delivered the judgment and hence the error apparent on the face of the record." At pages 15-16 of the RA it has been stated that " the Hon'ble Tribunal has again forgotten that because the Hon'ble Member was not fully conscious when this argument was advanced." At page 17 of the R.A. it has been stated that "the Tribunal could not have come to this conclusion except with a disjointed process of thought." At page 18 again it has been said that " this argument of the Hon'ble Tribunal is also disjointed process of thought" and further down on the same page it has been stated that " the Hon'ble Tribunal has also tried to side track the entire case laws in one sweep because of the proper (SIC) appreciation of the arguments which were not fully heard by the Hon'ble Member who delivered the judgment."

4. The respondents in their reply have, in our opinion, correctly pointed out that these submissions are contemptuous in nature and call for suo moto action under the Contempt of Courts Act against the applicant.

5. When during the course of hearing, we brought

this to the pointed attention of the applicant's counsel Shri Rawal as well as the applicant himself who was present in Court, applicant's counsel sought to explain these remarks by contending that neither he nor his client intended to be contemptuous towards the Bench, and only the actual position as obtaining on the date of hearing was sought to be projected in the R.A., namely that one of the Hon'ble Members ^{who heard the OA (not us)} was suffering from some pain in the jaw that day and therefore could not appreciate all the arguments advanced, which led to various errors being committed in the impugned judgment which have been referred to in the RA.

6. We are not satisfied with this explanation. It was open to the applicant to point out errors of law and fact in the RA but he should have strenuously eschewed the use of language which was contemptuous in nature, and which cast personal aspersions of lack of attentiveness, lack of consciousness, disjointedness in thought process etc. on the part of the Hon'ble Members and it is regrettable that he freely resorted to such language. It is even more regrettable that Shri Raval who is an experienced counsel allowed such an application to be filed. It needs hardly be mentioned that counsel appearing for litigants before the Tribunal are officers of the Court, and it is as much their duty and responsibility to uphold the dignity of the Bench as that of anyone else. This is all the more necessary at this juncture when the Tribunal is still in the nascent stage of

its existence, and it is vital that the foundation of wholesome and sound traditions are laid from now itself.

7. In this connection, it is also necessary to disabuse both the applicant and his counsel that the judgment of a Bench consisting of more than one Hon'ble Member is ascribable ^{to} a Single Member alone. In the instant case the judgment was by a Division Bench, and regardless of which Hon'ble Member prepared the draft, it is a judgment of both the Hon'ble Members .

8. Under the circumstance, we reject the explanation sought to be furnished by Shri Rawal during the course of hearing in regard to the use of language in the RA noticed above. We do not consider it necessary to pursue this particular issue further in this RA, but make it absolutely clear to both the applicant and his counsel that in the event such language and insinuations are reported in any pleadings hereafter before the Bench, we will not hesitate to initiate appropriate action in accordance with law.

9. Coming to the grounds taken in the RA, it is contended that the judgment has not been able to distinguish between the Requisition Slip and the File Movement Card; that the allegations made by the applicant against Respondent No.6 Darshan Lal were not rebutted and hence should have been accepted by the Tribunal; that the Tribunal had not correctly appreciated the fact that the file

had been requisitioned by C.O. (W) himself; as Vigilance who also allegedly had made an inquiry had not come to any adverse conclusion against the applicant, the Tribunal could not have concluded adversely against him; that in one place in the judgment it has been mentioned that sufficient opportunities were given to the applicant to participate in the Enquiry in which he did not participate, while in the same paragraph it is also said that the enquiry was prolonged owing to nonparticipation of the applicant; the only material witness was examined behind the applicant's back and yet the applicant's contention that the enquiry was vitiated was rejected; the reasons why the applicant was not present to cross-examine Raj Kumari escaped the Tribunal attention; the Tribunal's conclusion that it was clear from the Enquiry Officer's findings that the responsibility of changing PA lay with the applicant was not warranted; the statement in the judgment (para 11) that it had been contended that the Area Manager had recommended punishment by 2 years stoppage of increment with cumulative effect was disjointed and had not been taken to its logical conclusion; certain guidelines were referred to the judgment which did not form part of the pleadings; the observation in the judgment that the applicant was allowed to cross-examine the statement (Sic) of the witnesses and no prejudice was caused to him, ^{was} confused, as only witnesses could be cross-examined; the Tribunal could not have concluded that the allegations against the E.O. & Respondent

No.6 were baseless as neither had chosen to contradict the applicant's averments on affidavit; the Tribunal's observation that Mukesh Agarwal was applicant's cousin and as per rules the telephone could not be transferred to him unless required fee was paid as per rules was also not correct; case law cited was not followed; the Tribunal's conclusion that it could not interfere even if the Enquiry Officer's findings and the punishment imposed was extraneous and irrelevant was wrong; the preponderance of probability pointed towards collusion between Raj Kumari and Darshan Lal and yet this fact was not properly appreciated by the Tribunal; and the material contradiction in the demeanour /misdemeanour of the respondents who submitted two different versions, one before the Tribunal and the other before the Hon'ble Supreme Court were mutually contradictory.

10. A recital of the above grounds makes it manifestly clear that none of them bring it within the scope and ambit of Section 22(3)(f) AT Act read with Order 47 Rule 1 CIC under which alone any order/ decision/judgment can be reviewed. In the guise of a review application the applicant has actually filed an appeal and has sought to reargue the entire case, which is beyond the purpose of an RA as has been laid down by the Hon'ble Supreme Court in a catena of judgments. If, as the applicant alleges the respondents have made any submissions in the SLP

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filed in the Hon'ble Supreme Court, which are at variance with the contents of their pleadings before the Tribunal, the remedy does not lie in filing the present R.A.

11. The R.A. therefore is rejected and M.A. No. 3694/94 praying for permission to bring a certain addl. document on record in the RA needs no separate orders. No costs.

A. Vedavalli
(DR.A. VEDAVALLI)
MEMBER (J)

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

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