IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION : 31.07.1992

MP 1579/92, RA 148/92 in OA 1026/89
MP 1315, 1316 and 1317/92

I.C.A.R. & Ors. Vs. Shri Karam Veer

Shri V.K. Rao, counsel for the petitioners in RA (respondents in the OA).

Shri Karam Veer present in person (applicant in the OA).

ORDER (ORAL)

The learned counsel, Shri V.K. Rao stated that the RA 148/92 along with the MP No.1315/92 for condonation of delay in filing the RA be considered. In this event, he does not press the MP Nos.1316/92 and 1317/92, which relate to the setting aside of the judgement dt. 27.2.1992 which according to the respondents in the OA was passed without hearing them on the date of hearing, i.e., 11.2.1992. The other MP No.1317/92 is for condonation of delay. In view of this, since RA 148/92 is pressed, both these MPs., i.e., MP No.1316/92 and MP No.1317/92 are dismissed as not pressed.

The RA 148/92 has been filed on 13.4.1992. The normal period of filing the RA is one month from the date of communication of the judgement. Seeing that in ordinary course, in official matters, sometime is taken up and also a plea has been taken up in the MP 1315/92 for condonation of delay that the counsel engaged earlier did not intimate well within time the decision of the case nor supplied the copy obtained from the Registry, so they could only learn about the judgement from the copy filed by the applicant, i.e., the opposite party in the RA on 10.3.1992. From 10.3.1992, the

...2...

period of one month expired on 10.4.1992. The present application has been filed on 13.4.1992. So there is hardly a delay of three or four days. For the reasons explained in the MP, I find that there is a reasonable and substantial cause to condone the delay. The applicant of the OA, who apeared in person, opposed this application on the ground that the applicant should have known about the order earlier. Taking this also into account, I find that if the delay is not condoned, it will establish a precedent and that will deprive a legitimate right of a person to come for review of a judgement. In such a situation, I am inclined to allow MP 1315/92 and condone the delay caused in filing the said RA No.148/92.

The grounds taken in the RA cover a number of facts which have already been dealt with in the judgement. The case cannot be allowed to be reopened. However, one point that strikes most is that the finding in the judgement is that the increment of the applicant which has been withheld on account of his not qualifying in the typing test for a period of 5 years, should commence from 1.2.1989 or from 1.2.1990. There appears to be obvious mistake in calculating this period of 5 years. The applicant joined as Assistant on 25.2.1983. By virtue of the appointment letter, he has to clear the typing test within a period of 2 years for the grant of yearly increment and in case he does not clear that examination successfully, the increment will remain withheld for a period

...3...

of 5 years. The applicant was granted the first increment in February, 1984. Since the applicant did not qualify in the typing test, he was not allowed the second increment. The applicant thereafter also did not qualify the typing test at all, so taking the next increment due on 1.2.1984 which will bring the first increment to be withheld for a period of 5 years, the 5 years's period will expire on 1.2.1989 and the increment will fall due on 1.2.1990. The apparent error on the face of the judgement is that the date of increment has been taken as the date of the expiry of the period of 5 years while the increment falls next year in the normal course when it is dye. In view of this fact, I find that this error apparent in the face of the judgement in the operative portion needs to be rewived. The aplicant, however, stated that the period of 5 years has to be interpreted as commencing from the year of start, i.e., from 1.2.1984. This contention cannot be accepted because the increment is available to a person only after he completes yearly service. The other contention raised by the applicant is that this should not be corrected. Having heard the applicant in person, I am not inclined to accept that the increment which has been withheld for 5 years, should be withheld only upto 1.2.1989.

In view of the above facts, RA No.148/92 is allowed on the limited aspect and the judgement dt.27.2.1992 in OA No.1026/89 is, therefore, rewived and in para-8 of the

...4...

judgement in the lines 'Thus the applicant can claim the release of the increment only from 1.2.1989', 'Thus 5 years' period stands compleated in jFebruary, 1989, so the applicant is entitled to get the withheld increment w.e.f. 1.2.1989', the date 1.2.1989 should be read as 1.2.1990. In para-9 of the judgement, the word 'w.e.f. 1.2.1989' shall be substituted by the word 'w.e.f. 1.2.1990'. Thus the operative portion of the judgement will be read as follows :-

> "In view of the above discussion, the application is partly allowed and the respondents are directed to restore the increments of the applicant w.e.f. 1.2.1990 and the arrears of pay falling due should be paid to the applicant as he was allowed the restoration of increment w.e.f. 1.2.1990. The other reliefs claimed by the applicant are disallowed. The respondents to comply with the above order preferably within six weeks from the date of receipt of this order. In the circumstances, the parties shall bear their own costs.

A copy of the revised judgement shall be placed in the Review file as well as in the file of the OA. In the circumstances, the parties are directed to bear their own costs. A copy be given to the applicant expeditiously.

(J.P. SHARMA) 31.7.92

MEMBER (J)

31.07.1992