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Central Administrative Tribunal
Principal Bench: New Delhi

R.A. No. 107/93
O.A. No. 1039/90
M.P. No. 967, 968 and 969/93

New Delhi this the 26th Day of May 1994

In the matter of

Shri Lal Chand Misra & Ors. ... Applicants

Vs.

Union of India & Ors. ... Respondents

O R D E R

Hon'ble Mr. J.P. Sharma, Member(J)

Union of India through the Divisional Railway Manager's Office, New Delhi filed this Review Application against the judgement passed in the aforesaid O.A. dated 14.2.1992. M.P. No. 967/93 has been moved for staying the operation of the judgement. M.P. No. 968/93 has been moved for condonation of delay in filing the Review Application. M.P. No. 969/93 has been moved for exempting from filing a certified copy of the judgement alongwith the Review Application. A notice was issued to the Original Applicant who is the opposite party in this Review Application. The original applicant has opposed all the M.As. It is prayed that the stay of the judgement prayed not granted. The condonation of the delay has also been opposed. Exemption from filing of the judgement has also been opposed.

2. The Review Application has been filed on 7.3.1993 though the judgement was delivered on 14.2.1992. It is stated that delay in filing the review application because of procedural bottlenecks in the department in view of the fact that the decision has to be taken for filing the SLP as well as review and the file has to travel from three different divisions before a final decision can be taken. It is said that the Union of India has a good case for review and the delay is not deliberate or wilful.

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The stand taken by the opposite party is that the ground taken is vague and evasive. However, the matter has been considered in the light of the merit of the review application and there is a *prima facie* error apparent on the face of the judgement which shall be discussed hereinafter. The delay is not deliberate and reasonable and substantial cause has been shown for condoning the delay by an affidavit. The opposite party has not filed any counter affidavit. The delay, therefore, on the reasons mentioned in the M.P. is condoned and Review Application is ordered to be registered.

2. The Counsel for the Union of India has stated that SLP has already been filed against the judgement before the Hon'ble Supreme Court and this fact is not denied. The learned counsel for the Union of India had pointed out that in a similar matter where same issues of law and facts are involved, the SLP was filed against the judgement of OA No. 383/86 decided by the Principal Bench on 3.4.1992 in the case of Shri Vipin Kumar Jha and others and the Hon'ble Supreme Court has stayed that judgement by the order dated 5.3.1993 in CC No. 19407. A copy of the order has also been filed. In view of this fact the operation of the judgement is also stayed subject to the decision of the SLP filed before the Hon'ble Supreme Court.

3. MP No. 969/93 for exemption of filling the copy of the judgement. On face the Union of India has filed a photo copy of the judgement and that will serve the purpose for deciding the R.A. In view of the above fact M.P. No. 967/93, 968/93 and 969/93 are allowed.

4. In fact since the Union of India has also filed SLP before the Hon'ble Supreme Court, the RA cannot be disposed of on merit. However, there is an apparent error on the face of the judgement in as much as the judgement delivered by the Single Bench on 14.2.1992 and

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there were five applicants in this case. The case was decided on the basis of the decided case O.A. No. 130/86 Surinder Kumar Shah and Ors. Vs. Union of India decided by the Allahabad Bench of Central Administrative Tribunal on 29.10.1986 and the petitioners of that O.A. were granted proforma fixation of their pay on the basis of para 2 of the Railway Board's letter dated 10.6.1981 from 1.10.1980 on the post of Sr. Clerks. In the present case the same benefit has been given but it appears that those who have not even joined on 1.10.1980 has also been given this benefit. Shri Lal Chand Mishra joined on 29.1.1981, Ghan Shyam joined on 10.2.1981 and Rahisuddin on 26.7.1982. They could not be given any benefit before the date of their joining. The learned counsel for the original applicants ^{conceded} have conceded this fact. The judgement, therefore, has to be modified in that respect.

4. Union of India has also filed alongwith the Review Application a copy of the Railway Board's letter No. PC III/87/ CTC-1/1 dated 30.1.1987 on the subject of re-structuring of cadre of ministerial staff. This circular is also annexed to the Review Application as Annexure R-1. The counsel for the Union of India argued that the Circular could not be considered earlier in the case of O.A. No. 132/86. The Original Application No. 103/90 was filed in May 1990. Inadvertently this was not placed alongwith the counter filed by the Union of India in the case. The effect of this circular has also to be considered on merits.

5. The counsel for the applicant, however, argued that since the benefit has already been given to similarly situated employees by the Railways by implementing the judgement particularly by the Divisional Railway Manager, Eastern Railway, Mughal Sarai by the letter dated 8.9.1988 so the

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applicants may also be given the benefit. The Railway Board's letter dated 18.6.1981 provides that the vacancies of Sr. Clerks existing as on 30.9.1980 should be filled up in accordance with the orders enforced prior to the issue of this letter. The vacancies arising on or after 1.10.1980 shall be filled up in accordance with the procedure prescribed in this letter. It is provided that for direct recruitment of graduates to the post of Sr. Clerks shall be restricted to 20% of the total strength. ~~13.33%~~ ^{13.33%} of the total post of Sr. Clerks in the pay scale of Rs. 330-560 will be filled up from amongst the graduates clerks already serving in the lower grades after allowing them the age relaxation. These vacancies will be filled up by a competitive examination to be held by the Railway Service Commission. These orders will take effect from 1.10.1980 but no arrears shall be payable on this account. The pay of such employee appointed to the up-graded post may be fixed from 1.10.1980 but the actual payment of emoluments in the higher post should be allowed only from the date the employee takes charge of the upgraded post. However, the above fact is pending consideration before the Hon'ble Supreme Court in the case of General Manager, Northern Railway Vs. Vipin Kumar Jhan and Ors. As such the Review Application ^{cannot be} disposed of till the decision by the Hon'ble Supreme Court in the aforesaid case.

6. The Union of India has also filed a letter of the Northern Railway Headquarters dated 5.5.1993 where it is mentioned that O.A. No. 382/86 and TA 301/86 was decided by the Calcutta Bench by its judgement dated 12.5.1987, and 18.12.1990 in favour of the department. Patna Bench also decided the matter in OA 155/89 by its judgement dated 1.6.1990 in favour of the railways. These judgements were also not considered while the judgement was delivered on 14.2.1992 in the aforesaid case. Only the judgement of O.A. No. 132/86 was considered and on that basis the relief was granted.

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7. In the above facts and circumstances the Review Application is disposed of with a direction to the Registry to list the R.A. after the decision of the Hon'ble Supreme Court in the case of General Manager Vs. Vipin Kumar Jha and Ors. in which stay is also in operation against the petitioners of that case. The parties are given liberty to mention for listing of the R.A. after the decision of the Hon'ble Supreme Court.

J. P. Sharma,
(J. P. Sharma)
Member (J)

Mittal