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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

RA No.121/95 in  
OA No.543/90

New Delhi this the 19th day of April, 1996.

Hon'ble Sh. B.K. Singh, Member (A)  
Hon'ble Dr. A. Vedavalli, Member (J)

Sh. Chanchal Singh ...Applicant

(By Advocate Sh. J.K. Srivastava)

Versus

Secretary to the  
Govt. of India,  
Ministry of Information  
and Broadcasting,  
Shastri Bhavan,  
New Delhi.

...Respondent

(By Advocate Sh. M.L. Verma)

1. To be referred to the Reporter or not? Yes.
2. Whether it needs to be circulated to the outlying —  
Benches of the Tribunal?

  
(Dr. A. Vedavalli)  
Member(J)

Central Administrative Tribunal  
Principal Bench, New Delhi

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R.A.121/95 in  
O.A.543/90

New Delhi this the 19<sup>th</sup> day of April, 1996.

Hon'ble Shri B.K. Singh, Member (A)  
Hon'ble Dr A. Vedavalli, Member (J)

Shri Chanchal Singh,  
R/o Flat No.30  
Maitri Apartments,  
A-3, Paschim Vihar, New Delhi. .... Applicant

(By Advocate : Shri J.K. Srivastava)

VERSUS

Secretary to the Govt of India,  
Ministry of Information & Broadcasting,  
Shastri Bhavan, New Delhi. .... Respondent

(By Advocate : Shri M.L. Verma )

ORDER

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

The applicant Shri Chanchal Singh in this  
R.A.121/95 has sought review of the Tribunal's  
Order dated 2.12.94 in M.A.3308/94 (In  
O.A.No.543/90) dismissing the said application.  
(Annexure C).

2. The said order has been challenged by the  
applicant on the ground that there is an error  
apparent on the face of the record since the M.A.  
dated 6.9.1994 was dismissed on the ground that  
it was filed beyond the period of 30 days and  
there was no application for condonation of delay  
whereas the application for delay condonation was  
very much on the court file which has been  
inspected by the applicant and due to some  
over-sight this fact was not noticed by the  
Tribunal.

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3. We have heard the learned counsel for the parties at length and have perused the material papers and documents placed on the record.

The impugned order dated 2.12.1994 is as under :-

"This is an application filed against our order dated 7th July '94. This application was filed on 6th September '94. Apparently any petition for consideration of the Bench should be filed within 30 days. There is an enormous delay and application for condonation of delay has also not been filed. On the ground, this is dismissed, having heard the counsel for the parties. During the course of the arguments, the learned counsel for the applicant has stated that the relief claimed by the applicant in the OA is not being pressed. The OA is therefore dismissed as withdrawn. No costs. On this order this MA has been filed to restore the case back on file. Whenever a case is withdrawn, it will not amount to a case as that dismissed for default. This application is misconceived and create a wrong precedent. The petition is therefore dismissed. No costs."

4. Earlier order of this Tribunal dated 7.7.1994 in O.A. No.543/90 which was sought to be restored by filing the aforesaid M.A.3308/94 is as follows : (Annexure B).

"We have directed Shri Madhav Panickar, panel counsel for the Union of India, to take notice of this case under Rule 11(4) of the CAT Procedure Rules, for which he has accepted. We heard the counsel for the parties. During the course of the arguments the learned counsel for the applicant has stated that the relief claimed by the applicant

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in the OA is not being pressed. The OA is therefore dismissed as withdrawn. No costs.

The learned counsel for the respondents is entitled for his fees."

5. It is submitted by the applicant that O.A.543/90 which was dismissed by the Tribunal as withdrawn by the aforesaid order dated 7.7.1994 was filed against an order of the Central Govt to withhold 50% of his pension on permanent basis. Earlier he had filed another O.A.886/91 praying for payment of interest on the delayed payment of gratuity. But that earlier O.A. was dismissed by the Tribunal by an order dated 20.5.1993 (Annexure A) and the only surviving O.A. was 543/90. While so, he further submitted, that due to the instructions of the Senior Counsel or due to the mistake of his junior who was under the wrong impression that the case listed on 7.7.1994 was the other O.A. i.e. 886/91 which was earlier disposed of that the withdrawal of the case was sought as the Court understood the Counsel saying that he did not wish to press the matter or by over-sight, O.A.No.543/90 was dismissed as withdrawn on 7.7.1994. The applicant submitted that thereafter his counsel filed M.A.No.3308/94 for restoration of the aforesaid O.A.543/90 along with an application for condonation of delay which was about 15 days. The applicant stated that he had also filed an affidavit explaining the reasons for delay.

6. The respondents in reply have submitted that the Review Application is barred by limitation and the applicant has failed to explain the each day of delay which ought to have been done and the application on this ground alone is liable to be dismissed.

7. On merits the respondents have submitted that the applicants' counsel appeared on 7.7.1993 when O.A.No.543/90 was dismissed as withdrawn. When M.A.No.3308/94 for restoration of the said dismissed O.A. was heard earlier the applicants' counsel was present. The said M.A. was dismissed as misconceived. It was averred by the learned counsel for the respondents that on the same facts and circumstances this Review Application has been filed and hence it is not maintainable since it is barred by the principle of resjudicata. Further there are no grounds to allow the same. They have prayed for dismissal of the present Review Application.

8. We have considered the matter carefully. It is noticed that O.A. No.543/90 was dismissed as withdrawn on 7.7.1994 on the submission of the learned counsel for the applicant that the relief claimed by the applicant in the said O.A. is not being pressed. The said order was an oral order passed in the presence of learned counsel for the parties after hearing them. It is obvious that no liberty of any kind was sought by the learned counsel for the applicant when the said order was

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passed. While so, M.A.3308/94 which was filed by the applicants on 6.9.1994 seeking restoration of the said O.A.No.543/90 was heard by the same Bench on 2.12.1994. It was felt by the Tribunal regarding limitation that "there is an enormous delay and application for condonation of the delay has also not been filed. <sup>On</sup> the ground, this is dismissed, having heard the counsel for the parties."

9. It is obvious that the question of delay in filing the M.A. and its condonation was considered and rejected only after hearing learned counsel for the parties and there is nothing to indicate that the application for condonation of delay had in fact been filed. The learned counsel for the applicant would certainly have made the necessary submissions before the Tribunal if such application had in fact been filed since the aforesaid order dismissing the M.A. is an oral order pronounced in the Court when the learned counsel for the applicant was very much present. Moreover, the index of the applicant's document on the M.A. file indicates that only three documents have been filed. They were filed on 6.9.1994. There is no mention in the M.A. regarding any delay condonation application being filed that day or later. The applicant himself admitted that only on inspection of the court file, he found that the said application for condonation of delay was filed. Even if it had been so filed it ought to have been brought

to the notice of the Tribunal during the hearing by the learned counsel for the applicant. In the facts and circumstances, we are of the considered view that there is no error apparent on the face of the record. Moreover, it is obvious that the question of delay and its condonations were considered on merits by the Tribunal after hearing the counsel and was rejected by the aforesaid order dated 2.12.1994 which is now sought to be reviewed, even though it was observed that the application for condonation of delay has not been filed. Ground of error apparent on the face of the record raised by the applicant in our opinion is, therefore, devoid of any merit and is untenable.

10. Coming to the merits of the said Order dated 2.12.1994 in M.A.No.3308/94 seeking restoration of the O.A., the Tribunal on consideration of the matter has held categorically that "whenever a case is withdrawn, it will amount to a case as that dismissed for default. This application is misconceived and we are not inclined to interfere and create a wrong precedent. The petition is, therefore, dismissed."

11. The applicant in the present R.A. has not been able to put forward any valid reasons or grounds justifying a review of the said order. Further, what was sought in M.A.No.3308/94 and is being sought in the present R.A.No.121/95, in

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essence is the same viz restoration of O.A.543/90 which was dismissed as withdrawn by this Tribunal by its order dated 20.5.1993 (Annexure A). That issue as to restoration has already been adjudicated by this Tribunal by the impugned order dated 2.12.1994 (Annexure C). The present R.A. is, therefore, hit by the principle of resjudicata and cannot be entertained.

12. In view of the foregoing discussion, we are of the opinion that the present R.A. is not supported by any valid and justifiable grounds and is devoid of any merit. It is, therefore, dismissed. No costs.

A. Vedavalli  
(Dr A. Vedavalli)

Member (J)

B.K. Singh  
(B.K. Singh)  
Member (A)

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