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Central Administrative Tribunal
Principal Bench
New Delhi

RA No. 303/92
In OA 1922/90

Date of decision: 7.5.93

Union of India through
General Manager,
Northern Railway

.....Review Applicants.

Vs.

Sh. Ashwani Kumar

...

Respondent

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

For the Review Applicants/

Respondents in OA 1922/90 ... Sh. Romesh Gautam,
Counsel.

For the respondent/

applicant in OA 1922/90 ... Sh. S. Kulshrestha,
Counsel.

ORDER (ORAL)

The Union of India through Northern Railway have filed this Review Application being aggrieved by the judgement dated 25.5.92 by which the Original Application of the applicant Shri Ashwani Kumar was disposed by the following observations:-

" In view of this, the present application is allowed with the direction to the respondents to dispose of the application for compassionate appointment according to rules. The respondents shall dispose of the representation of the applicant, which he has to make before them within one month from the date of the order and if already a representation is pending with them, the same should be also disposed of within six months from the date of receipt of a copy of this order. The respondents are directed to dispose of the representation of the applicant in the light of the observations made in the judgement. If the applicant is still aggrieved by the order, he can again seek the remedy under the law. In the circumstances, the parties shall bear their own costs."

I have heard both the counsel for the parties and perused the record and have gone through the impugned judgement. The preliminary objection taken

by the opposite party in the RA is that the RA is not within the limitation of 30 days as prescribed under Rule 17 of the C.A.T. (Procedure) Rules, 1987 as a copy of the judgement was received by the respondents on 5.6.92 and the limitation for filing the RA expired ^{which} was till 4.7.92. In the application for condonation of delay only para 2 refers to certain facts that the Railway Department took some time for getting the approval for filing the RA and in the meantime the limitation of 30 days expired.. This fact on the face of it cannot be said to be a reasonable probable cause. Had the matter been delayed by a couple of days, then the mere understanding of this mention in para 2 of the application for condonation of delay would have made out certain grounds. The explanation of the words that "in the meantime the limitation expired" can only be understood that only a few days thereafter the necessary approval was received. There is no explanation for any further delay caused in filing this RA. Thus no reasonable probable cause is made out to condone the delay.

However, since the arguments have also been heard on merits besides the RA is barred by time, I have considered those aspects also. The main challenge of the learned counsel Sh. Gautam, appearing for the Review Applicants is that since the employee through whom the Original Applicant draws his title ^{as} ~~being~~ adopted son was serving in the Railway Protection Force and since the Railway Protection

Force comes within the scope of 'Armed Force of the Union' as such this Tribunal cannot have jurisdiction and ^{take} ~~have~~ cognizance to deal with such matters arising out of the service of the deceased employees. It has also been argued that though the point of jurisdiction was not specifically or ^{constructively} ~~strongly~~ taken in the reply filed to the OA, since it was a legal issue it was open to the respondents in the OA to raise the issue at the time of the final hearing of the OA. However, none appeared on behalf of the respondents at the time when the OA was decided after hearing the learned counsel for the applicant. The contention of the learned counsel for the Review Applicants is also that it amounts to an error on the face of the judgement.

I have considered these arguments at length. Firstly though the point of jurisdiction has to be raised as a preliminary objection in the reply yet it should have been taken by the contesting party at the time of the final hearing of the matter. If the contesting party does not represent itself personally or professionally then it should not have any grudge after the ^{case} ~~point~~ has been decided. It is not open now to the Review Applicants to raise the issue of jurisdiction as it does not come within the scope of review as laid down in Order 47 Rule 1 CPC which analogically applies while disposing of a Review Application under Section 22(3)(f) of the Administrative Tribunals Act, 1985.

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The learned counsel for the opposite party in the RA has also referred to certain authorities(1986(1) ATC 273; 1991(15) ATC 396; 1991(15) ATC 86;and 1991(16) ATC 849) that the point of jurisdiction cannot be taken up for the first time in the RA. That apart, the OA has ~~now~~ been disposed of without any mandatory direction to give compassionate appointment to the applicant in the OA. The direction is only to consider the matter on the basis of the representation made by the opposite party in the RA for compassionate appointment. The respondents are free to pass a reasonable speaking order as per directions in the judgement. There is no error apparent on the face of the record. Nothing ^{more} has been pressed by the learned counsel for the parties. The RA is, therefore, dismissed as being barred by time as well as devoid of merit leaving the parties to bear their own costs.

Domane,

(J.P.Sharma) 7.5.73.
Member(J)