

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 31/90 With
M.P. ~~RAY~~ No. 84/90

199

DATE OF DECISION 5.9.1990.

Shri K.M. Agrahari

~~x~~Petitioner Applicant

Shri B.B. Raval

Advocate for the Petitioner(s) Applicant

Versus

The Lt. Governor through

Respondent

Chief Secy., Delhi Admn. & Ors.

Shri M.M. Sudan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman.)

The applicant, who is Assistant Employment Officer in the Directorate of Employment & Training, Delhi Admn., filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the imaugned order dated 26.3.1980 to the extent that it provided for withholding of two increments with cumulative effect, for directing the respondents to release to him the increments from September, 1981 to September, 1989, for directing them to pay the arrears of pay and allowances in terms of the Fourth Pay Commission's Report w.e.f. 1.1.1986, and for awarding penal interest on the outstanding amounts.

2. The application was filed on 8.1.1990. The applicant has also filed MP-84/90 for condoning the delay in filing

the application. The respondents have filed a reply to the show-cause notice on the question of admission. We feel that the application could be disposed of at the admission stage itself.

3. The respondents have contended that the present application is not maintainable, that the version of the applicant that the full text of the impugned order dated 26.3.1980 was obtained by him only on 9.8.1989, is incorrect, that there is documentary evidence to show that the applicant personally took delivery of the said order by acknowledging receipt on the office copy and that the application is barred by limitation and jurisdiction. The applicant has contended that the complete text of the impugned order dated 26.3.1980 was not served on him and that on 9.8.1989, he managed to get the complete text when he came to know that the penalty of stoppage of two increments was awarded by taking into consideration of the charge-sheet which was never served to him by 26.3.1980. In MP-84/90, he has referred to the pursuit of his cases in the Supreme Court, in this Tribunal and in the Tis Hazari Courts, and to an observation by this Tribunal, in its order dated 29.8.1989, while disposing of RA-103/89 in OA-246/89 filed by him. He has stated that the delay in filing the present application is "short" and has prayed for its condonation.

4. We have considered the rival contentions and have gone through the records carefully. By order dated 10.4.1990, the Tribunal directed the respondents to produce the relevant files, which they have complied with.

.....3....

5. The applicant has dwelt at length on the long history of his litigation with the respondents since 1974 (CW-254/74 filed in the Delhi High Court; CW-407/77 filed in the Delhi High Court; LPA-125/76 filed in the Delhi High Court; CW-547/81 filed in the Delhi High Court; CW-3180/82 filed in the Delhi High Court; Civil Suit No.170/83 filed in the Court of Senior Sub-Judge, Delhi, which stood transferred to this Tribunal as TA-129/86; Civil Suit No.170/83; OA-233/89, OA-234/89 and OA-246/89 filed in this Tribunal, etc.).

6. The respondents have produced photocopy of the impugned order dated 26.3.1980 together with its endorsements (vide Annexure R-I to the reply affidavit, pages 105-106 of the paper-book) and the letter dated 27.3.80 of the applicant addressed to the Director, Directorate of Employment, stating that he was reporting for duty as per orders of the Delhi Administration letter No. 14/2/77-SI/Vol.II dated 26.3.1980 (vide Annexure R-II to the reply affidavit, page 107 of the paper-book). At the left hand margin of the photocopy of the order dated 26.3.1980, the applicant has acknowledged receipt of a copy and appended his signature. We have verified this from the original file produced before us.

7. There is nothing on record to substantiate the assertion made by the applicant that the full text of the impugned order was not received by him in March, 1980 and that the same was received only on 9.8.1989. He has not explained as to how and from whom he "managed" to get the complete text on 9.8.1989. It is pertinent to observe that the impugned order dated 26.3.1980 finds mention in

the judgements of the Tribunal dated 28.8.1987 in TA-129/86 and dated 4.7.1989 in OA-246/89 (vide pages 71, 87 and 88 of the paper-book). It has also been mentioned in the Tribunal's judgement dated 2.8.1988 in TA-832/85 (vide K.M. Agrahari Vs. Chief Secretary, Delhi Admn. & Others, 1989(2) SLJ (CAT) 518 at 520). In para.3 of the Tribunal's judgement dated 4.7.1989, in OA-246/89, it has been observed that "this penalty of stoppage of two increments has become final and accepted by the applicant. There is no appeal against this order". The applicant filed RA-103/89 against the aforesaid judgement in OA-246/89 which was dismissed by judgement dated 29.8.1989. One of the grounds raised in the R.A. was that the petitioner had come across, after the delivery of the judgement, with the second page of order No.14/2/77-S.I. Vol.II dated 26.3.1980 which was not given to him with the aforesaid order and the second page showed endorsement marking a copy for action to the Director, Vigilance. The Tribunal observed in this context that "It has not been explained how some papers were not given to the applicant earlier and how they have come in his knowledge at this stage, which will make a material difference in the judgement passed by me in the original application."

8. Apart from the above, it may be recalled that the impugned order dated 26.3.1980 was passed in view of the judgement of the Delhi High Court in LPA-125/76 dated 24.10.1979, the operative part of which reads as under:-

"But as we are ourselves of the view that the dismissal of the petitioner is too severe a

8

punishment in the circumstances of the case, we allow the appeal and set aside the order of dismissal dated 10th April, 1975, and direct the appellate authority to consider the pleas of the petitioner in respect of the quantum of punishment which should be less than dismissal or removal and pass suitable orders". (Vide page 43 of the paperbook)

9. A perusal of the relevant file indicates that the appellate authority applied his mind independently and passed the impugned order dated 26.3.1980. The Lt. Governor was the appellate authority. That he took his decision, keeping in view the observations made by the Delhi High Court, is clear from the following extract from his note dated 21.3.1990:-

"I have gone through the judgement of the Division Bench of the High Court. To retire this officer compulsorily, would negative the spirit of the High Court order. Shri K.M. Agrahari joined as Assistant Employment Officer in 1969 and was dismissed/removed from service in April, 1975. Compulsory retirement would virtually mean removal from service in this case, as he would not get any pensionary benefits.

2. While going through the judgement of the High Court, it is quite clear that the Judges considered the charges as not too serious. In view of this, and the fact that Shri Agrahari has suffered for about five years, I think the ends of justice and the requirements of administrative discipline and propriety would be met by reinstating him as Assistant Employment Officer and by stopping his two increments with cumulative effect."

(Vide Note at page 16 in File No. F-14(2)/77-S.I.-Vol.II).

10. In our considered opinion, the present application is not maintainable, as it is clearly barred by limitation. Raking up a grievance which arose in March, 1980, at this stage, is not permissible in view of Section 21 of the Administrative Tribunals Act, 1985. The applicant

Q

has also not established a prima facie case on the merits warranting its admission. The application is, accordingly, dismissed at the admission stage itself.

There will be no orders as to costs.

D.K. Chakravorty

(D.K. Chakravorty)
Administrative Member

5/9/89

P.K. Kartha
5/9/90

(P.K. Kartha)
Vice-Chairman (Judl.)