

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

R.A.No.376 of 1992 Date of decision 29.10.93
in

O.A.No.2318 of 1991.

Krishena KumarApplicant.
Versus

Director of Audit, Northern Railway..Respondent.

CORAM:

Hon'ble Mr.Justice V.S.Malimath, Chairman.
Hon'ble Mr.S.R.Adige, Member(A)

Applicant in person.

For the respondent: Shri P.H.Ramchandani, counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A).)

This is an application dated 28.9.92 filed by Shri Krishena Kumar praying for review of the judgment dated 20.1.92 in O.A.No.2318/91 'Shri Krishena Kumar Vs. Union of India'.

2. It appears that the petitioner had assailed the impugned order in the Hon'ble Supreme Court, who by their order dated 1.9.92 were pleased to observe as follows:

"Shri C.S.Vaidyanathan, learned senior counsel appearing as amicus-curiae on behalf of the petitioner, at our request has indicated that the record shows that two options dated 3.3.66 and 13.9.68 mentioned as option Nos.V and VI in para 6 of the decision in 'Krishena Kumar Vs. Union of India(1990)SCC 207 appear to have not been given to the petitioner, Krishena Kumar while the decision proceeds on the basis that all the options mentioned in para 6 therein were duly given but not availed of by the petitioner. Learned counsel further submits that the Central Administrative Tribunal in the impugned order, made on a fresh application filed by the petitioner in this behalf has taken the view that this point is covered on the principle of constructive res-judicata by the earlier decision. Learned counsel states that the appropriate remedy in such a situation may be by a review petition filed by the petitioner on this ground, which advice he would give to the petitioner. Since the petitioner is not present in the court today, the matter is adjourned to 12.10.92. The office should give intimation of the next date to the petitioner."

3. It appears that thereupon the applicant filed this review petition on 28th Sep.,1992. Notices

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were issued to the respondents and were returned unserved but on 8.2.93 /^{which} was the date fixed for hearing, the applicant was absent. Again he was absent on the next date fixed i.e. 15.3.93 and the review application was, therefore, dismissed in default for want of prosecution. Thereupon the applicant filed SLP No.5275/93 in the Hon'ble Supreme Court who by their order dated 30.7.93 were pleased to dispose of the SLP by setting aside the order dated 15.3.93, and directing the Tribunal to afford the petitioner another opportunity of being heard. Accordingly, the petitioner, who was present in person on 11.10.93, was heard. He submitted that the written arguments furnished by him may be looked into and the case be disposed of accordingly. Shri P.H.Ramchandani, who appeared on behalf of the respondents, had no objection to this course of action being adopted.

4. Under Order 47 Rule 1CPC., a decision/judgment/order can be reviewed only if;

- i) it suffers from an error apparent on the face of the record;
- ii) new material or evidence is discovered which was no within the knowledge of the parties or could not be produced by that party at the time the judgment was made, despite due diligence; or
- iii) for any sufficient reason construed to mean analogous reason.


5. A perusal of the impugned judgment dated 20.1.92 makes it clear that none of the above ingredients have been made out to bring it within the scope of a review. The impugned judgment dated 20.1.92 sets out the legal position clearly that whatever points the petitioner had in support of his case ought/^{to} have been urged in the first application and that he is now barred from taking some more points which he could have taken earlier but had not done so, under the principle

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of constructive res-judicata. In the impugned judgment, it had been noted that earlier the O.A. filed by the applicant after having been thoroughly considered was dismissed by the Tribunal on 31.3.86 and the SLP filed against the said judgment was also dismissed by the Hon'ble Supreme Court by their judgment dated 13.7.90 in Krishena Kumar Vs. AIR 1990 SC. 1782. A further petition filed by the petitioner was also dismissed as withdrawn. Hence O.A.No.2318/91 was also dismissed as being not maintainable. If in fact options No.V and VI in para 6 of the decision in 'Krishena Kumar Vs. Union of India (1990(4)SCC 207) were not given to the applicant while the decision proceeded on the basis that all the options mentioned in para 6 were duly given, but were not availed by him, the applicant should have agitated the matter at that stage itself in the proper forum. He cannot now seek a review of the said order of the Hon'ble Supreme Court before this Tribunal more particularly because the applicant should have taken the grounds that options Nos.V and VI had not been given to him in the first application itself.

6. Under the circumstances, the ingredients to warrant a review of the impugned judgment dated 20.1.92, have not been made out and this petition is accordingly rejected.


(S.R.ADIGE)
MEMBER(A)


(V.S.MALIMATH)
CHAIRMAN.

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