

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

MAs No.556 &557/93
RA No.65/94 in OA No.2712/92

NEW DELHI THE 4th DAY OF MARCH, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

Union of India through

1.General Manager,
Northern Railway,
Baroda House
New Delhi.

2.Divisional Railway Manager,
Northern Railway
Moradabad Division
Moradabad.

... Applicants
vs. (Respondents in the OA)

Shri Mangat Singh ... Respondent
(Applicant in the OA)

ORDER(IN CIRCULATION)

JUSTICE S.K.DHAON:

This is an application on behalf of the Union of India and ors.(Respondents in OA No.2712/92) praying that we may review our judgement dated 15.10.1993.

2. In our judgement, we recorded the finding that no counter-affidavit had been filed on behalf of the respondents despite time being granted to them on numerous occasions. We also declined to grant any further time. We clearly stated in our judgement that, in the absence of any counter-affidavit, we have no option but to accept the averments made in the original application.

3. Along with the review application, an application has been filed for bringing on record certain judgements given by this Tribunal and the Hon'ble Supreme Court on the question of limitation.

4. We may dispose of the question of limitation first. In our judgement, we have taken note of the arguments advanced at the Bar on behalf of the respondents that the original application is barred by limitation. We have given our reasons

for not accepting the contention raised on behalf of the respondents. Having reconsidered the question of limitation, we see no reason to take a view different from the one taken by us in the judgement under review. Moreover, even if our judgement on the question of limitation is erroneous, it cannot be said by any stretch of imagination that we committed any error apparent on the face of the record in taking the view that, in the circumstances of the case, the original application cannot be rejected on the ground of limitation.

5. On 21.10.1992 notices were issued to the respondents. On 4.11.1992, no one appeared on behalf of the respondents even though they had been duly served through dasti summons. However, this Tribunal passed an order giving four weeks' time to the respondents to file the counter-affidavit. On 21.12.1992, no one appeared on behalf of the respondents. However, the Deputy Registrar granted them time to file a counter-affidavit before 15.1.93. On 25.1.1993 again no one appeared on behalf of the respondents. The Deputy Registrar on that day directed the matter to be listed on 5.3.1993 and in the meantime directed the respondents who had been served to file a counter-affidavit on or before 25.2.1993. On 5.3.1993 again no one appeared on behalf of the respondents. The Deputy Registrar repeated the order passed by him on 25.1.1993. On 12.4.1993, Shri R.L.Dhawan, Advocate, appeared before the Deputy Registrar and stated that he represented all the respondents. He was given time to file the counter-affidavit on or before 17.5.1993. On 18.5.1993 no one appeared on behalf of the respondents. However, a statement was made before the Deputy Registrar that Shri R.L.Dhawan had

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✓ wrongly accepted the notice on behalf of the respondents. The Deputy Registrar felt that since sufficient time had been granted to the respondents for filing the counter-affidavit and no counter had been filed, the matter should be listed before the court on 7.6.1993. The following order was passed on 7.6.1993:

" As prayed by Shri R.L.Dhawan, counsel for the respondents list it on 29.07.93. On that day, he will file a memo of appearance if he is directed by the department to appear. He may also file reply before that day. We make it clear that no further time will be given to the respondents."

On 29.7.1993, Shri Dhawan appeared on behalf of the respondents. He prayed for and was granted one week's further time to file a reply. The matter was directed to be listed on 18.8.1993. On 18.8.1993, Shri Dhawan appeared on behalf of the respondents. He prayed for and was granted one week's further time to file a counter-affidavit. On 7.9.1993, Ms.Kiran Singh, proxy counsel, appeared for Shri H.K.Gangwani, counsel for the respondents. The matter was directed to be listed on 8.9.1993 to enable the counsel for the applicant to argue on the question of limitation. On 8.9.1993, Shri H.K.Gangwani appeared on behalf of the respondents. He prayed for and was granted four weeks' time for filing a reply on behalf of the respondents. The matter was relisted on 13.10.1993. On 13.10.1993, Shri S.K.Gupta, proxy counsel appeared for Shri H.K.Gangwani, counsel for the respondents and the case was adjourned to 14.10.1993. On 14.10.93, Shri Gangwani appeared on behalf of the respondents. He stated that he will argue the matter without filing any counter-affidavit. The matter was relisted

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on 15.10.1993. On 15.10.1993, the arguments were heard and the judgement was dictated in open court. It will be seen that the respondents have been treating this Tribunal rather casually. In the circumstances, the counter-affidavit filed along with the review application has got to be ignored. We also feel that we committed no error much less an error apparent on the face of the record by proceeding to dispose of the original application on the footing that, in the absence of any counter-affidavit, the averments made in it have got to be accepted as correct.

6. There is another application seeking condonation of delay in filing of the review application. The review application was filed on 9.2.1994. The period prescribed for filing a review application is 30 days from the date of receipt of the order. It has to be remembered that the judgement was given on 15.10.1993 in open court. Along with the application seeking the condonation of delay, a chart has been filed indicating therein the action taken by the respondents for the purpose of filing of the review application. The contents of this chart, as material, are these. On 26.10.1993, a copy of the judgement was received by the Advocate of the respondents. On 8.11.1993, a copy of the judgement was received in the legal cell of the department. On 15.11.93, the file was put up by the competent authority for filing the review application. On 23.11.1993, the case was nominated to the Advocate for filing review. On 26.11.1993 an order was issued by the department to contact the Advocate for filing the review application. On 21.12.1993, parawise comments were sent to the Advocate. On 15.1.1994, the Advocate sent the review

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✓ application for verification. On 27.1.1994, the review application along with the counter-affidavit was put up for signatures before the competent authority. On 28.1.1994, the papers were signed and sent to the Advocate for filing the review application. On 9.2.1994, the review application was filed before the Tribunal. (19)

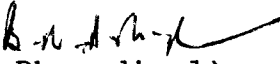
7. It will be seen that even in the matter of the filing of the review application, the respondents did not act diligently. No explanation has been offered as to why the copy of the judgement received by the learned counsel for the respondents on 26.10.1993 was not immediately forwarded to the department concerned. Again, no satisfactory explanation has been offered for the time taken between 15.11.1993 and 23.11.1993 when the case was nominated to the Advocate for the filing the review application. However, no explanation has been offered for the delay between 26.11.1993 and 21.12.1993 when on the former date, orders were issued by the department to contact the Advocate for filing the review application and ^{when} on the latter date parawise comments were sent to the counsel for filing the review application. The department, it appears, took about a month in forwarding the papers to the counsel for filing the review application. Thereafter, the learned counsel appearing for the respondents took unusually long time for sending the review application for verification. This happened on 15.1.1994. The review application along with the counter-affidavit was put up for signatures before the relevant competent authority on 27.1.1994. No satisfactory explanation is forthcoming for the delay during the intervening period. Finally, it is stated that on 28.1.1994,


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✓ the papers were signed and sent to the counsel for filing the review application and the same was filed on 9.2.1994. The delay between 28.1.1994 and 9.2.1994 remains unexplained. (20)

8. On the whole, we are not satisfied that the delay has been satisfactorily explained. This application, therefore, has got to be rejected as barred by limitation also.

9. The review application is rejected summarily.


(B.N. Dhoundiyal)
Member(A)


(S.K. Dhaon)
Vice-Chairman(J)

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