

Central Administrative Tribunal, Principal Bench

R.A.No.103/97 in
O.A.No.82/92

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

(20)

New Delhi, this **04th** day of **July**, 1997

Shri Surendra Prasad
s/o Shri Dular Chand Prasad
Central Bureau of Investigation
Anti Corruption Branch
C.G.O.Complex
New Delhi
r/o Quarter No.1500, Sector 7
Pushp Vihar
New Delhi. Applicant

Vs.

1. Union of India, through
Secretary to the Govt. of India
Ministry of Home Affairs
Department of Official Languages
North Block
New Delhi.
2. The Director
Central Bureau of Investigation
Ministry of Home Affairs
Govt. of India
Block No.3, 4th Floor
CGO Complex, Lodi Road
New Delhi - 3. Respondents

O R D E R (By Circulation)

Hon'ble Shri R.K.Ahooja, Member(A)

The review petitioner (original applicant) had filed OA No.82/92 seeking a direction to the respondents to absorb him in the cadre from the same date as his junior colleague was absorbed with all consequential benefits. His allegation was that when the Official Language cadre for the Ministry of Home Affairs was formed in September, 1981, two juniors in the order of selection S/Shri R.D.Singh and Sahdev Choudhary were included but the applicant was left out. The OA was filed in the year 1992. The respondents had filed a counter reply but none had appeared on behalf of them at

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the time of final hearing. However, after considering the facts and circumstances of the case, the OA was dismissed due to laches and delay. (21)

2. The review petitioner (original applicant) submits that there are patent errors both of fact and law in the impugned judgment. Firstly he points out that though none had appeared on behalf of the respondents, the order speaks of counsels having been heard on both sides. Secondly, it was submitted that as none had appeared for the respondents the plea of limitation on 'doctrine of sub-silentio', should have been deemed to have been given up. The petitioner also submits that the OA having been admitted, it should have been concluded that the question of limitation had already been gone into at the time of admission and could not be reopened during the course of the hearing. Finally, the petitioner submits that the various judgments cited by the learned counsel for the applicant to show that limitation did not apply were not taken into consideration and that the ratio of Supreme Court judgment in S.S.Rathore, AIR 1990 P-10 has been erroneously applied by the Tribunal in the impugned order.

3. We have carefully considered the above grounds for review. It is correct that none had appeared on behalf of the respondents. This fact, of-course, had already been indicated at the relevant place below the cause title. Therefore, the mention in the first sentence in Para 3 of the order that the counsel had been heard on both sides it is obvious was a typographical mistake. However, this minor typographical mistake is of

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no material consequence to the outcome of the OA since no argument on behalf of the counsel for the other side has been cited. A minor typographical mistake of in-consequential nature having no bearing on the outcome, is an insufficient ground for review. As regards the plea that the absence of the counsel for the respondents implies that the respondents did not wish to press the ground of limitation taken by them is also not correct. The absence of any oral submissions at the time of final hearing, does not deprive the party of the right to have its written submissions, made as part of the pleadings taken into account. The respondents have not been silent but have filed a counter. The plea of limitation is a legal plea which can be taken at any time. Though the respondents had raised this ground but no specific order was passed thereon at the time of admission of the application. It cannot therefore be assumed that by implication objection as regards limitation had been over-ruled by the Bench while admitting the Original Application.

4. The review petitioner has also cited extensive case law in support of his argument that the case of the applicant did not suffer from limitation. He has also submitted that the Tribunal did not go into the same case law cited at the time of disposal of the Original Application. This in our view is no ground for review. It is not necessary for the Tribunal to take into account each and every citation which may be submitted by the parties, and it need discuss only those cases which in its view are relevant to the facts and circumstances of the case. On the basis of facts and circumstances of the case and what it consider relevant case law the tribunal

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can take its decision. The fallibility of judges as human beings is a frailty of the system which we have to contend with and that is why the safeguards by way of appeal courts has been provided for. There is however, a distinction between review and appeal and needless to say that in review it does not serve to go over the same grounds merely to show that the decision is erroneous on merits. The review jurisdiction is to be exercised if there is an error apparent on the face of the record. We however, find none here.

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5. The petitioner has also requested for a personal hearing. We do not consider that there is any issue raised by the petitioner which requires any further clarification or elucidation. In our view therefore, the review petition can be disposed by circulation.

6. In the light of the above discussion, finding no merit in the RA, the same is dismissed.

R.K.Ahooja
(R.K.AHOOSA)
MEMBER(A)

/rao/

A.Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)