

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 04th day of February 2009

Original Application No. 759 1997

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. S.N. Shukla, Member (A)

1. Smt. Sarita Sharma, widow of late Raj Kamal Sharma, R/o Village and P.O. Akondha, Tahsil Chandpur, Distt: Bijnor.
2. Master Piyush, S/o Late Raj Kamal Sharma (minor) under the guardianship of Smt. Sarita Sharma (mother) R/o Village and Post - Akondha, via Chandpur, Distt: Bijnor.

. . . Applicants

By Adv : Sri A. Tripathi

V E R S U S

1. Union of India through the Post Master General, Dehrdun Region, Dehradun.
2. The Superintendent of Post Offices, Bijnor Division, Bijnor.
3. The Inspector of Post Offices, South Sub Division, Bijnor.
4. Rajesh Kumar, S/o Ram Lal Village and Post Basta, Distt: Bijnoar. (impleaded vide order dated 19.05.1999).

. . . Respondents

By Adv: Sri S.C. Mishra - for Respondents No. 1, 2 & 3
Sri O.P. Gupta - for respondent No. 4

O R D E R

By Hon'ble Mr. Justice A.K. Yog, Member-J

Sri A. Tripathi, Advocate appeared on behalf of Smt. Sarita Sharma and Master Piyush (alleged applicants - being widow and son) of deceased applicant, Sri Raj Kamal Sharma. Sri S.N. Chatterji,

additional standing counsel for U.O.I. (Union of India) alongwith Sri S.C. Mishra, Senior Central Government Standing Counsel on behalf of Respondent No. 1, 2 and 3 and Sri O.P. Gupta, Advocate on behalf of Rajesh Kumar, respondent No. 4 (impleaded under Court's order dated 19.03.1999).

2. At the outset we may note that the legal representative of deceased Raj Kamal Shrama (original - applicant) did not come - forward to get them, impleaded - on their own and tried to play 'hide and seek' which is evident from the order sheet. Newly impleaded respondent No. 4 (represented by Sri O.P. Gupta, advocate), was directed by the Tribunal to take steps for substituting L.Rs of deceased (Sri Raj Kamal Sharma/the Applicant) and consequently said Respondent No. 4 MA (substitution) No. 2129/07 alongwith MA (Delay Condonation) No. 2128/07 - supported by an affidavit of Rajesh Kumar/Respondent No.4. Respondent No. 4, apparently did not claim that OA had abated due to non-substitution of L.Rs sole-deceased Applicant.

3. It is also interesting to note that aforesaid MAs were filed without disclosing the date of death of Raj Kamal Sharma. Date of death of Applicant (Ram Kamal Sharma) is not available on record till date and learned counsel for the parties are unable to disclosed it even today. Court Officer informs (and name of the counsel dispute) that MA (Delay

De

Condonation) No. 2128/07 has not been disposed of till date - and therefore substitution Application was not maintainable.

4. In this context, two orders of this for convenient perusal, are reproduced: -

"13.9.2007

Hon'ble Mr. Justice Khem Karan, V.C.

Hon'ble Mr. K.S. Menon, A.M.

Shri O.P. Gupta appears for Rajesh Kumar who has moved one application under Rule 16 (2) of CAT Procedure Rules 1987 for recalling Ex.Party order dated 30.9.2002 by which OA was allowed Ex.parte. He says that the applicant in the original OA namely Raj Kamal Sharma died about a year back. The question relating to bringing on record his legal representative has been pending. It transpires that Shri A. Tripathi, assuming that he was representing the legal representatives of Sri Raj Kamal Sharma continued seeking time for moving the application for substitution. Learned counsel for the respondents made a request for giving some time to bring the record on application for substitution.

Learned counsel for the applicant has drawn the attention of the Court towards the order dated 11.09.2007 where it has been observed that in the circumstances, it is now a matter between Rajesh Kumar and official respondents. It is stated by Sri Gupta that application for recalling original order was moved at a time when Sri Raj Kamal was alone so he was a party to this application and copy was given to Sri Tripathi.

With a put the record on the line, Sri Tripathi is asked to disclose the legal representative of late Raj Kamal Sharma within a period of 10 days and thereupon Sri Rajesh Kumar will move proper application for bringing those L.Rs on record. The matter can be heard thereafter.

List on 30.10.2007 for orders.

As requested by respondents' counsel a copy of this order be given to him so as to facilitate giving of the names of taking some other steps."

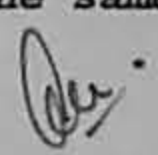
"11.12.2007

Hon'ble Mr. Ashok S. Karamadi, JM

Hon'ble Mr. K.S. Menon, AM

Sri A. Tripathi learned counsel for the applicant and Sri O.P. Gupta learned counsel for respondent No. 4. None for the other respondents.

Having regard to the order passed on 13.09.2007 respondents' counsel is asked to disclose the legal representative of late Sri R.K. Sharma who is no more. He submits that he has sent the letter to the same address but the same has returned with the



endorsement that the applicant is no more. Further he states that he is not aware of his legal representative and heirs. He further states that in view of the application filed by the other side bringing the legal representative/heirs on record his application may be allowed and necessary notices may be issued to the legal representative/heirs mentioned in the application.

In view of the above statement and on perusal of record the application which is before us bringing the legal heirs of the deceased applicant in which it is stated with the knowledge of the deponent Smt. Sarita Sharma who is the wife of the deceased applicant and one minor son namely Piyush and requested to implead in the OA. Having regard to the statement the applicant's counsel is directed to substitute the legal representative of the deceased applicant as his legal heirs. Office is directed to issue notice to the legal heirs after substituting them by the applicant's counsel.

List this case on 30.01.2008."

5. None of the counsel for the respondents made objected that 'substitution' of L.Rs, was their responsibility. Sri A. Tripathi, repeatedly sought time to implead L.Rs and also directed to disclose particulars of LR's. When the LR's, in above circumstances failed to take steps the OA stood abated. However, the Respondent No. 4, be that as it may, discharged obligation of his opponent - i.e. the LR's of the Applicant by bringing them on record.

6. Further we find that name of the original applicant 'Ram Kamal Sharma, son of Som Datt Sharma' has been deleted while incorporating names of legal representative under the aforesaid Bench order dated 11.12.2007. This again is a manifest irregularity. The legal representative is one who steps into the shoes; Name of LR's - represent the interest of 'original party' and cannot claim beyond what is

Per

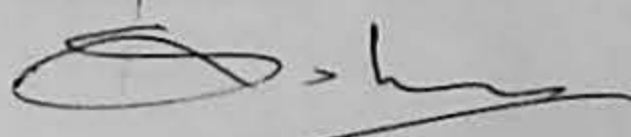
claimed by the Applicant, deceased Ram Kamal Sharma as Applicant could not/should not be deleted. Legal representatives are to be brought on record with a note 'Since deceased through Legal Representatives through 1/1, 1/2, (and so) on. For this purpose relevant provisions General Rules (Civil) and CPC may be perused.

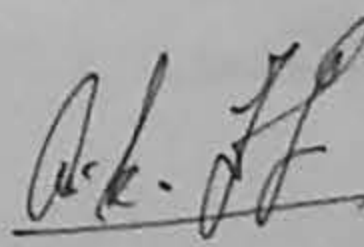
7. We further find that original applicant (Raj Kamal Sharma) had filed the OA after termination of his services and in his place respondent No. 4 has been appointed. Raj Kamal Sharma/the Applicant was appointed on dated 05.05.1997. Appointment was revoked within a couple of month and this order is challenged in this OA filed on 21.09.1997. Relief of reinstatement cannot be extended to LRs.

8. In view of the above no relief can be granted to the legal representative of the original applicant (Raj Kamal Sharma).

9. Registry shall restore the details - name of Raj Kamal Sharma and affix requisite Note - re LRs.

10. The OA is rendered infructuous and disposed of accordingly. | No cost.


Member (A)


Member (J)

/pc/