

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 9th DAY OF SEPTEMBER, 2009)

PRESENT :

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

**REVIEW APPLICATION NO.99 of 2005
IN
ORIGINAL APPLICATION NO. 1141 OF 2004
(U/s, 19 Administrative Tribunal Act.1985)**

1. Union of India, through Secretary, Ministry of Communication, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Allahabad Zone, Allahabad.
4. Director, Postal Services, Allahabad Zone, Allahabad.
5. Senior Superintendent of Post Offices, Varanasi.

..... Respondents-Applicant

By Advocate : Shri K. C. Sinha
Shri S. Chaturvedi

Versus

Devendra Kumar Singh, S/o Late Bharat Singh, R/o J-1/4,
Sheomani Bazar, District-Varanasi.

.....Applicant-Opposite Party

By Advocate : Shri V.P. Singh

ORDER

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

1. Heard Shri K.C. Sinha, on behalf of the applicant (Union of India and Others) and Shri V.P. Singh, learned counsel for the opposite party in review petition no.99/05 arising out of order dated 05.07.2005 in OA No.1141 of 2004-Devendra Kumar Singh

(u/s)

Versus Union of India and Others; copy of said order filed as Annexure-1 to the review application.

2. Legal grounds for 'review' are contained in para 21 of the review petition and the same read:-

"That thus, in view of the facts stated hereinabove the impugned judgment dated 5th July, 2005 deserves to be reviewed on the following grounds:-

- I. BECAUSE even though in para-16 of the counter affidavit it was categorically stated that the ban still stands as was evident from the Post Master General, Allahabad Region, Allahabad Memo No. Bharti JM-2/2003-04/2 dated 16/19.7.2004 and the Hon'ble Court also took the cognizance of the said letter in para-3 of the judgment yet a contrary finding has been recorded referring to the averments made in Para 3(F) of the counter affidavit to the effect that there was no ban on appointment which apart from being factually incorrect was also contrary to the stand taken in Para-16 of the counter affidavit and this is an apparent error on the face of record and accordingly, the judgment dated 5.7.2005 deserves to be reviewed.
- II. BECAUSE it was not a case of the applicant that any fresh recruitment was made and he was not considered.
- III. BECAUSE the respondents-Department has also imposed a ban order on the fresh recruitment in the Postal Department vide ordr dated 24.8.1998 and as such, in view of the said ban order also the department could not make any fresh appointment.
- IV. BECAUSE the Hon'ble Court has wrongly interpreted the judgment of the Hon'ble Supreme Court dated 4.8.1994 and even though it was not a case of the applicant that any fresh recruitment was made and he was not considered yet the Hon'ble Court issued direction for fresh appointment. Accordingly, the judgment dated 5.7.2005 deserves to be reviewed.
- V. BECAUSE the effect of the office memorandum dated 22.6.1998 issued by the Department of Personnel & Training was that after expiry of one year it shall automatically stand lapse and whereas the recruitment of the applicant having been in pursuance of the vacancies of 1991 which stand lapse because of the aforesaid office memorandum dated 22.6.1998 there was no occasion for issuing any direction for appointment against the said vacancies i.e. which existed in the year 1991, which had

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lapsed automatically. As such, the judgment dated 5.7.2005 deserves to be reviewed.

Grounds (II), (III), (IV) and (V) fall beyond the scope of review jurisdiction.

3. On behalf of the applicant, Shri K.C. Sinha, Advocate submits that the Tribunal while passing order dated 05.07.2005 (giving rise to the present review petition) has gone wrong in making observation and recording finding. It is being argued that para 3(F) of the counter affidavit (in OA) has been misread by Tribunal while deciding OA vide order dated 5.7.2005 as contained in Legal Ground No.I in Review Application which reads:-

"BECAUSE even though in para-16 of the counter affidavit it was categorically stated that the ban still stands as was evident from the Post Master General, Allahabad Region, Allahabad Memo No. Bharti JM-2/2003-04/2 dated 16/19.7.2004 and the Hon'ble Court also took the cognizance of the said letter in para-3 of the judgment yet a contrary finding has been recorded referring to the averments made in Para 3(F) of the counter affidavit to the effect that there was no ban on appointment which apart from being factually incorrect was also contrary to the stand taken in Para-16 of the counter affidavit and this is an apparent error on the face of record and accordingly, the judgment dated 5.7.2005 deserves to be reviewed".

4. In support he referred to the High Court judgment and order dated 9.11.2005 in Civil Misc. Writ Petition No.69515/05 (filed by Union of India) wherein Court passed following order:-

"This Writ Petition has been filed challenging the judgment and order dated 05/7/2005 by which the claim of the respondent employee had been allowed recording the finding of fact that the ban on appointment is no more continuing, therefore the appointment may be made.

Shri K.C. Sinha, learned Assistant Solicitor General has submitted that the finding to the extent that the ban has been lifted is factually incorrect and it is an error apparent on the face of the record, therefore, the Court should grant indulgence. We are of the considered opinion that if the Tribunal has recorded a wrong finding inspite of the

(Signature)

suggestion made by the present petitioners that the ban is still continuing, it would be more appropriate that the petitioners may file review application before the Tribunal.

In view of the above, Shri Sinha prays and is permitted to withdraw the writ petition. Writ petition is dismissed as withdrawn, with liberty to file the Review Application.

9/11/2005
SB-69515-05

Sd-Illegible
Sd-Illegible"

5. Argument regarding misreading of Para 3(F) and 'overlooking' para 16 of the counter affidavit has no merit.

6. Para 3 (F) of the counter affidavit (in OA No.1141 of 2004 sworn by Lal Ji Lal, on 10.04.2005) read:-

3(F) "That the aforesaid order of the Hon'ble Supreme Court could not be complied with because of ban imposed to fill the vacancies and the ban was lifted by the Ministry of Personnel, Public Grievances and Pensions, Deptt. Of Personnel and Training, New Delhi in his OM No.3/1/92-Dir(2) dated 22.6.98 which was circulated by the D.G. (Posts) New Delhi No.2-9/98-PE.T dated 24.8.98 and further the S.S.P.O., Varanasi(E) Dr. Varanasi endst. No.L-1/63/Canteen dated 26.11.98. The para (2) (i) of letter No.3/1/92-Dir(2) dated 22.6.98 of the Ministry of Personnel, Public Grievances and Pensions, Deptt. Of Personnel and Training, New Delhi reads as under:-

"Vacancies which remained unfilled for a period of more than one year would be deemed as having lapsed in terms of Ministry of Finance, Department of Expenditure, New Delhi O.M. No. 7(7)-E (Coord)/93 dt. 3.5.93. Therefore, such vacancies can be filled up by the Department/Establishments only after following the normal procedures for creation/revival of the posts."

(Underlined by us to lay emphasis)

7. Perusal of 3(F) of the counter affidavit shows that Respondents themselves did not treat relevant Orders/Memorandum in question placing absolute 'ban' on appointment since respondents categorically stated in the said para- "the ban was lifted by the Ministry of Personnel, Public Grievances and Pensions, Deptt. Of Personnel and Training, New

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Delhi in his OM No.3/1/92-Dir(2) dated 22.6.98 which was circulated by the D.G. (Posts) New Delhi No.2-9/98-PE.T dated 24.8.98." Applicant (Union of India & Ors.) refers to and have perused O.M. dated 22.6.1998 and order dated 5.8.1999 (SA-I on record-filed with Supplementary Affidavit).

8. Memorandum dated 5.8.1999, provides 'Ban on Creation of Plan and Non-Plan Posts' and also "Ban on filling up of vacant posts". The relevant extract of the same is reproduced:-

(2)Ban on filling up of vacant posts

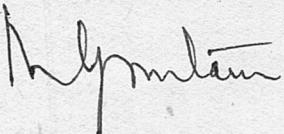
"Every Ministry/Department shall under take a review of all the posts which are lying vacant in the Ministry/Department and in the Attached and subordinate offices, etc., In consultation with the Ministry of Finance (Department of Expenditure) FAs will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Ministries etc. are available. Till the review is completed no vacant posts shall be filled up except with the approval of the Ministry of Finance (Department of Expenditure)."

9. Aforequoted para of OM dated 5.8.1999 shows that there was no absolute ban and posts could be filled up by adopting procedure prescribed therein. No attempt made nor placed from record to show that the 'authorities' ever adopted that procedure to honour the Judgment and order passed by the Apex Court (quoted in Para 3 of Tribunal order dated 5.7.2005). Stand taken by the respondents that there was ban on filling up of vacant posts is mis-conceived, unsustainable and more or less arbitrary. In para 3 of the review Application-Order dated 16/19-7.2004 passed by Post Master General, Allahabad is quoted-which shows that Department stand of the Applicants (Union of India & Ors.) was to take steps only after 'Ban' was lifted. As far as reference to para 16 of the Counter affidavit (in Gd. I of the RA) is concerned-no

reference made by Shri K.C. Sinha, Advocate during his arguments. We, however, deal with it. Grievance of the Applicants (Union of India And Ors.) in Review that the Bench failed to notice para 16 of Counter affidavit (in its order dated 5.7.2005 under Review) has no merit. There is no mention that plea contained in said para was placed and/or brought to the notice of the 'Bench' while OA was heard. Said objection in Review is an after thought.

10. We find no misreading on the part of the 'Bench' while rendering order dated 05.7.2005 (subject matter of review). The applicants have contested the case up to Apex Court in the year 1993. Employee is thereafter compelled to file OA which was decided in the year 2005-vide order dated 5.7.2005 and he is still made to contest Writ Petitions, and also Contempt case which resulted in Review Application and said to be pending in this Tribunal. This shows that the Respondents in the OA are not a 'bonafide' litigant. It is sad that Government authorities have adopted 'attitude'; and 'course' which erodes faith of its 'employees' in its 'Fairness'. Apart from it, such a course gives rise to 'frivolous litigation' and no wonder Courts/Tribunals are over-burdened.

11. Review application dismissed with cost which we quantify Rs10,000/- to be paid within one month from the date of receipt of copy of the order. No Costs.


Member-A


Member-J

/ns/