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Reserved

Central Administrative Tribunal
Allahabad.

Registration M.A.No.65/B/T/87

Ibne Hussain ... Applicant

Vs.

Union of India and others ... Respondents.

Hon. D.S.Misra, A.M & Hon.G.S.Sharma, J.M.

By Hon.G.S.Sharma, JM

This application for restoration is directed against the order dated 29.4.1987 passed by this Bench dismissing T.A. No.679 of 1986 in default of the plaintiff-applicant. The application was moved under the signatures of Sri R.K.Nigam Advocate on 22.6.1987 with the allegation that this case was entrusted to him by the plaintiff in April 1987 and on account of his being out of station he could not appear before this Bench on 29.4.1987 when the case had come up for hearing and in case the suit is not restored the plaintiff will suffer irreparable loss. The application was not supported by any affidavit and after obtaining time to file an affidavit, the plaintiff filed his own affidavit subsequently stating that this case was formerly being conducted by Sri J.R.Killedar, Advocate but on account of his acute illness, the said counsel could not come on 29.4.1987 and the plaintiff could know about this fact only on 13.5.1987 when he approached Sri Killedar. The affidavit further states that the plaintiff thereafter engaged another counsel Sri R.K.Nigam and also filed his vakalatnama in May 1987 but by that time the case already stood dismissed. The plaintiff personally could not appear on the date of hearing on account of his financial difficulties and the faith in his counsel and in case the suit is not restored he will suffer an irreparable loss. The application has been opposed on behalf of the defendant-respondents.

2. A perusal of the record shows that this suit was filed by the plaintiff in the Court of Munsif Jhansi in July 1985 but despite giving sufficient opportunity when no written statement was filed, this Bench had ordered on 5.2.1987 that the case shall proceed ex-parte. On that date, the plaintiff had applied to summon the original record of his disciplinary proceedings and a direction to this effect was issued to the defendants. On 29.4.1987, none appeared on behalf of the plaintiff though the learned counsel for the defendants was present and the suit was dismissed in the default of the plaintiff. The restoration application was moved about 2 months thereafter on 22.6.1987. Rule 15 of Central Administrative Tribunal (Procedure) Rules, 1987 provides that an application for restoration of a case can be filed within 30 days from the date of dismissal. The present application having been filed much after the statutory period allowed for restoration is, therefore, barred by limitation and deserves to be dismissed on this ground alone. There is no provision in the rules or in the Administrative Tribunals Act XIII of 1985 to condone the delay in filing such applications. The plaintiff as well as his counsel both were present on 5.2.1987 when 29.4.1987 was fixed for hearing and he was well aware of the date fixed in his case. The limitation for 30 days has, therefore, to be ~~reckoned~~ ^{reckoned} from 29.4.1987 and the application having been filed after the prescribed period cannot be considered on merit.

3. In the alternative and in order to have our satisfaction, we have considered the case of the applicant on merits. The allegations made in the restoration application moved under the signatures of Sri R.K.Nigam have been belied by the affidavit filed by the plaintiff himself subsequently. The plaintiff does

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not state in his affidavit that he had requested Sri Nigam to do pairwi in his case in April 1987 and as such, the non-appearance of Sri Nigam on 29.4.1987 for any personal reason is immaterial. It is evident from the allegations made in paras 3 to 5 of the affidavit that Sri Nigam was engaged by the plaintiff only after 13.5.1987 when Sri J.R.Killedar showed his inability to conduct the case of the plaintiff due to his poor health. The vakalatnama executed by the plaintiff in favour of Sri Nigam is dated 27.5.1987. This makes it amply clear that in April 1987, Sri Nigam had no instructions to represent the plaintiff in this case before the Tribunal and the cause shown by him for his non-appearance in the restoration application has, therefore, no concern with the case of the plaintiff and the suit cannot be restored on the grounds mentioned in the restoration application. We further feel that when the case was listed for ex-parte hearing, the plaintiff was expected to look after the case and give necessary instructions to his counsel as it was a regular suit transferred from the district Court. In any case, on his own showing, the plaintiff knew at least on 13.5.1987 that his counsel Sri Killedar did not appear before the Tribunal to conduct his case and as such the undue delay made by him in moving the application for restoration and that too with wrong facts remains unexplained. We, therefore, do not find any sufficient or good ground for restoring this case.

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The application is accordingly rejected.

MEMBER (A)

Sharma
6.11.87

MEMBER (J)

Sharma
6/11/87

Dated: 6.11.1987
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