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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

Registration Misc.Application No.53/B/T of 1987

M.S.Rai and others ... Applicants

Vs.

Union of India and another ... Respondents.

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This is an application purporting to be under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as the CAT(P)Rules) for the restoration of transferred application no.740 of 1986 dismissed in default of the parties on 5.2.1987. It is alleged in the application that the Clerk of the Counsel for the applicants could not mark the case on 5.2.1987 and as such it escaped the attention of the counsel and he could not attend the case resulting in dismissal of the case in default. It is further alleged that the counsel for the applicants knew about the dismissal only on 23.4.1987 when the party gave a copy of the order dated 5.2.1987 of the dismissal of the suit and the applicants will suffer irreparable loss in case the case is not restored. The application contains verification clause and it was filed in the registry on 24th April, 1987 without any signature. This fact was noted by the concerned official on the top of the application as well as in the office report dated 15.5.1987 noted in the order sheet. At the time of hearing the application, the learned counsel for the applicants put his signatures on this application when we pointed out this discrepancy to his notice.

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.2.

There is no affidavit of the clerk of the learned counsel for the applicants in support of the application.

2. We have heard the learned counsel for the applicants and have also perused the record. On the transfer of the case of the applicants to this Tribunal, appearance was put in on behalf of counsel for both the parties on 30.9.86 before this Bench and the case was adjourned to 11.12.1986. On 11.12.1986, there was no sitting of the Bench and the date 5.2.1987 suggested on behalf of learned counsel for both the parties was fixed in the case by the Court Master. On 5.2.1987, none appeared for the parties and the case was dismissed in their default. The present application was filed on 24.4.1987 with the allegations already stated above.

We are of the view that the applicants are supposed to have full knowledge of the date 5.2.1987. This fact has not been disputed before us. The limitation for the restoration of the suit will, therefore, start from 5.2.1987 on which the suit was actually dismissed and not from the date the copy of the order was served on the plaintiff or from the date the plaintiffs informed their counsel about the same. Sub rule(2) of Rule 15 of the CAT(P)Rules 1987 runs as follows:-

"Where an application has been dismissed for default and the applicant files an application within thirty days from the date of disissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

Provided, however, where the case was disposed of on merits the decision shall not be reopened except by way of review. "

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3. According to this rule, the application for the restoration of the suit should have been filed by the applicants within 30 days from the date of dismissal and the application having been filed on 24.4.1987 is, therefore, clearly barred by time and cannot be considered on merits. It is not alleged in the restoration application as to when the copy of the dismissal order was received by the applicants and in the ordinary course, it is supposed to have been despatched to them soon after the order of dismissal. The limitation, therefore, cannot be counted from 23.4.1987 when the learned counsel for the applicants knew from any of them about the dismissal of the case.

4. In the alternative, even on merits, we do not feel convinced that there was any sufficient ground for the non-appearance of the applicants or their counsel on 5.2.1987. The transferred case is the original suit and the parties generally file the copies of their documents on the date of hearing. Nothing is shown as to why out of 9 applicants none appeared for doing Pairwi in the suit on 5.2.1987. It is not very clear to us as to why the Clerk of the Counsel for the applicants forgot to mark the case on 5.2.1987 when the case was ordered to be listed on that date about two months before. It is not a case which was listed for the first time for hearing before the Tribunal on 5.2.1987 after showing it in the cause list and without giving any other intimation to the parties. We, therefore, do not feel convinced that there was any sufficient cause for the non-appearance for the applicants or their counsel on the date of hearing.

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5. The application is accordingly rejected.

~~MEMBER (A)~~
26/8/87

Zulhaire
26/8/87

MEMABER (J)

DATED 26.8.1987
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