

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 19th Day of October, 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Biswas, A.M.

Civil Misc. Recall Application No. 5422 of 2000

in

Civil Misc. Recall Application No. 4648 of 2000

in

Original Application No. 565 of 1992.

Shyam Lal C.P. Water Man r/o Mohalla Chhauni,
City Banda, Lastly employed in the office of
Post Master, Banda.

. . . Applicant.

Counsel for the applicant: Sri R.C. Gupta, Adv.

Versus

1. The Post Master Banda.
2. The Union of India through Director General,
of Indian Posts and Telegraphs Department,
New Delhi.

. . . Respondents.

Counsel for the Respondents:

Order (Open Court)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

We have heard counsel for the applicant. This
Misc. App. No. 5422/2000 is for recall of the order
dated 5.9.2000 by which Misc. Application No. 4648/
2000 was dismissed in default.

2. In order to appreciate the correct legal
position it is necessary to mention the facts, in
short, giving rise to this application. Applicant
(now deceased) was serving as contingency paid



Waterman in Head Post Office Banda. On 21.12.91 the order was passed that applicant being of old age is unable to work and on account of this, his services were terminated with effect from 31.12.91. Aggrieved by this order, applicant filed O.A. No. 565/92. During pendency of this application, applicant Shyam Lal died on 20.10.95. Misc.Application No. 1406/96 was filed on 26.7.96 for bringing the heirs on record. As the application could not be filed within ninety days, as provided in Rule 18 of Central Administrative Tribunal (Procedure) Rules 1987 (hereinafter referred to as rules). The Division Bench dismissed the application for substitution as time barred by order dated 23.9.96 on the ground that no satisfactory explanation has been given for the delay. The O.A. abated on rejection of the application for substitution. Then Misc. Application No.1926/96 was filed with the prayer to recall the order dated 23.9.96. This application was rejected on 21.8.98 by the following order:-

" None for the applicant. Sri Satish Mandhyan proxy to Sri N.B. Singh counsel for the respondents. In this case order regarding abatement was passed on 23.9.96 due to death of the applicant. Thereafter this application was filed with the prayer for recalling the order of abatement dated 23.9.96. ~~Thereafter this application was filed with the prayer for recalling the order of abatement dated 23.9.96.~~ This application has been listed on 10.12.96, 27.2.98, 13.4.98 and on 27.7.98. The last opportunity for moving this application was given. Yet none is present today. The applicant or anyone on his behalf therefore appears to have no interest in this case. Therefore recall of abatement order stands rejected. "

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Then another application was filed by the applicant registered as Misc. Application No. 4648/2000 which was dismissed on 5.9.2000. For recall of the order dated 5.9.2000, now this Misc. Application No. 5422 of 2000 has been filed.

3. In our opinion^{application} for recall of the order dated 23.9.96 was not legally maintainable in view of the provisions contained in the proviso to Sub Rule 2 of Rule 15^{which} reads as under :-

"(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfied 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.

From the perusal of the order dated 23.9.96, it is clear that the application was rejected on merits being time barred. As provided in the proviso mentioned above in such situation the order can not be re-opened except by way of application filed for review of the order. No such application has admittedly been given by the applicant. In these circumstances we do not see any useful purpose in recalling the order dated 5.9.2000. The application is accordingly rejected.

4. The learned counsel Kumari Pratima Singh then submitted that the applicant may be given

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liberty to file an application for review. In our opinion, no liberty is required to be given. It is always open to the applicant to file review.

There will be no order as to costs.


Member (A.)


ViceChairman

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