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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Review Application No.98 of 2003.

In

Original Application No.560 of 1995.

Allahabad this the 24th day of December 2003.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Union of India and Ors... Applicants.

Versus.

Samradhwaj Misra ... Respondent.

O_R_D_E_R

By Hon'ble Mrs. Meera Chhibber, Member (J)

This Review Application has been filed by respondents in the O.A. against the judgment and order dated 26.09.2002 passed by this Tribunal on the ground that Hon'ble High Court has recorded a finding that grounds raised by respondents/petitioners before the Central Administrative Tribunal have not been considered, therefore, they are permitted to file Review Application before the Tribunal. They have also submitted that original applicant was not a regular employee, therefore the P & T Manual would not be applicable to him. They have further submitted that Tribunal had relied on Rule 9 (3) of C.C.S (C.C.A) Rules while applicant was governed by E.D.A. (Conduct & Service) Rules, therefore, the judgment being illegal is liable to be reviewed. They have also submitted that O.M. dated 13.01.1997 would have no retrospective application whereas Tribunal has relied on this O.M., therefore, judgment is wrong and that the judgment of N. Radhakrishan has been wrongly relied upon by the Tribunal.



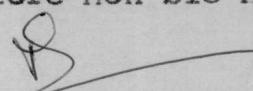
2. Petitioners in Review Application have also filed an application for condonation of delay on the ground that file had to be routed through different channels, therefore, delay may be condoned.

3. We have read the Review Application and application for condonation of delay. At the outset we would like to quote Rule 17 of C.A.T (Procedure) Rules 1987 which for ready reference reads as under:-

"17 (i) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed".

4. As per Rule 17 (i) Review Application should have been filed within 30 days whereas this Review Application has been filed only on 14.10.2003. Even if the date is computed from the date of judgment passed by Hon'ble High Court of Allahabad in writ petition No.21966 of 2003 i.e. 19.05.2003 this Review Application is still clearly barred by limitation. Since the Rule is in a negative form, Review Application filed after delay are liable to be dismissed on the ground of delay itself, however, we are not dismissing this Review Application on the ground of delay because respondents had approached the Hon'ble High Court and some orders have been passed by the Hon'ble High Court. Application for condonation of delay, therefore, is allowed.

5. We have now to see whether this Review Application can be entertained at all in view of the orders passed by Hon'ble High Court. The judgment dated 26.09.2002 against which Review Application has now been filed was challenged by the respondents before Hon'ble High Court.



Obviously they would have taken all these grounds in the writ petition as well, which have now been taken before us but after hearing counsel for the respondents/petitioners Hon'ble High Court declined to entertain the submissions made by counsel by recording that ^{the} point with regard to non-applicability of Rule 82 of Postal Manual does not seem to have been advanced before the Tribunal. However, if petitioners had raised this issue and the same has not been considered, petitioners would be at liberty to move an application for review before the Tribunal. With above observations writ petition was dismissed.

6. A perusal of this order clearly shows that the grounds taken before Hon'ble High Court did not find favour with the Hon'ble High Court and liberty was given to file the Review Application only if petitioners had raised the issue with regard to non-applicability of Rule 82 of Postal Manual. Therefore, the foremost thing that is required to be seen is whether respondents had raised this issue at all before the Tribunal or not because liberty given is conditional.

7. We have once again perused the O.A. as well as counter affidavit filed by respondents but there is no averment anywhere in the entire counter which either states that applicant was not a regular employee or that for this reason Rule 82 would not be applicable. On the contrary, it is seen applicant had categorically stated in paras 4.13, 4.17, 4.18 and 23 C that the charge with regard to M.O No.4455 dated 10.09.1973 was an infringement of Rule 82 of Postal Manual Vol III as Rule 82 of Postal



Manual expressly forbade holding of enquiry in such cases where he had already been tried and exonerated by the Trial Court but in reply respondents in para 29 and 32 have stated paras 4.13, 4.17 and 4.18 need no comments which makes it abundantly clear that respondents had not even raised this issue before the Tribunal at all.

8. We are rather surprised how respondents could even submit before the Hon'ble High Court that such a point was raised before the Tribunal. Since no such point was even raised by the respondents it cannot be said that there is any error apparent on the face of record.

9. It goes without saying that scope of review application is very limited and it cannot be filed to reargue the case or for taking new points which were never taken before the Court. In fact we can safely say that respondents have tried to mislead the Hon'ble High Court also by stating before their Lordships that such a point was raised before the Tribunal. ~~for this action of respondents, the~~ Review Application needs to be dismissed with costs. No party can be allowed to pollute the neat working of judiciary by their motivated designs or mislead the court by making false statements.

10. Since the writ petition was dismissed and no other point has been even referred to in the order dated 19.05.2003 passed by Hon'ble High Court, we need not even deal with the other points raised in the Review Application. However, we would like to say that Review Application has been filed in a most casual manner without any responsibility. We say so, because ground F for ready reference reads as under:

DR.A.B

"Because while quashing the charge sheet dated 24.08.1994 the C.A.T Allahabad also relied upon Rule 9 (3) of the CCS (CCA) Rules which was amended as per the office Memorandum dated 13.01.1997 issued by the Department. The services of the applicant are governed by the E.D.A. (Conduct & Service) Rules and not by C.C.S. (C.C.A) Rules as per the appointment letter of the applicant as such, the finding recorded by this Hon'ble Court in this regard is illegal which deserves to be reviewed".

But in the whole judgment dated 26.09.2002 there is no reference to C.C.S (C.C.A) Rules at all. On the contrary, in para 6 of the judgment it has specifically been mentioned that Rule 9(3) of P&T Extra Departmental (Conduct & Service) Rules 1964 was held to be violative of Article 14 by Hon'ble Supreme Court in the case of Secretary, Ministry of Communication and Ors Vs. V.S.S. Gundu Acharey leaving it open to the Government to frame a new set of rule substituting rule 9 (3) which was later on amended vide O.M. dated 13.01.1997. Therefore, the Review Application is totally devoid of merits. In view of the discussion made above, this Review

Application is dismissed with costs of Rs.1000/-

Cost to be deposited within 2 weeks in CAT Bar Association

Member-J

Manish
Member-A.

Manish/-