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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

~~XXXXXX~~ M.A.No. 250 OF 1987.

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IN

O.A.No. 71 OF 1987.

DATE OF DECISION 6.1.1987

SHRI A.N. TRIPATHY

Petitioner

S. TRIPATHY

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondents.

J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal. *N*

Shri A.N. Tripathy,
Section Officer (Retd.)
Western Railway (Audit)
Bombay, at present working
at Senior Accountant,
BHEL, Baroda.

..... Petitioner.

(Advocate : S.Tripathy)

Versus.

1. Western Railway,
Notice to be served on Director
of Audit, Western Railway,
Churchgate, Bombay.
2. Comptroller and Auditor General
of India, Bahadurshah Zafar Marg.,
New Delhi.
3. Bharat Heavy Electricals Ltd.,
Notice to be served on General
Manager, BHEL, PDWR, Baroda.

..... Respondents.

(Advocate : J.D. Ajmera)

J U D G M E N T

M.A. No. 250 OF 1987.

in

O.A.No. 71 OF 1987.

Date : 6.1.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

In this application, the applicant Shri A.N.Tripathy, (Section Officer (Retired), Western Railway, Audit) working as Senior Accountant in BHEL at Baroda seeks review of our decision rendered in O.A.No.71/87 on 22.5.87; whereby the application was dismissed at the stage of admission as barred by time. According to the applicant, the impugned order dated 7.7.83 is in contravention of the rules and the Railway Administration has exercised the authority beyond the provisions of rules and hence the same is non-est and hence law of limitation is not applicable. It is further stated that the period of his prosecuting before the Labour Court at Baroda should be excluded and once that period is excluded his case comes within the period of limitation. He

has therefore prayed that the order dated 22.5.87 passed in O.A.No. 71/87 be reviewed and set aside and the same be restored for disposal on merits. The opponents-Respondents have opposed the application and filed their detailed objections on 7.10.1987 wherein they have denied the averments and the allegations made by the applicant. According to them, the contentions raised by the applicant for reviewing the judgment delivered by this Tribunal is misconceived and after thought. In their submission there is no mistake apparent on the face of the record to obtain a review of the order. The applicant has also filed a rejoinder to reply on 28th November, 1987 reiterating the contentions raised in the application.

2. We have heard Mr. S.Tripathy and Mr. J.D.Ajmera, the learned counsel for the applicant and the Respondents respectively. Mr.Tripathy contended inter-alia that the law of limitation should be construed liberally to advance the ends of justice. In support of his contentions he mainly relied on the cases viz; (i) Dinbai V/s. Dominion of India, 1951 Bombay, p.72, (ii) Lajpat Rai V/s. State of Punjab, 1981 S.C. p.1400, (iii) Bhikhabhai V/s. J.V.Vyas, 4 G.L.R. p.873. Mr. J.D.Ajmera however strenuously urged that the review application is not maintainable as there are no valid grounds to exercise the power of review conferred on the Tribunal. In support of his submission he has cited the following cases :-

- (a) A.I.R. 1965 Orissa, p-9
- (b) 1963 Supreme Court, p-1626
- (c) A.I.R. 1977-Allahabad, p-163.

3. The short question for our consideration is whether there is any mistake or error apparent on the face of record which warrants review of our decision rendered in O.A.No. 71/87.

4. At the outset it may be stated that the applicant challenged the validity of the order dated 7.7.83 passed by the Audit Officer (Admn.), Western Railway, Bombay; whereby permanent absorption of the petitioner was sanctioned. The power to sanction such absorption is within the competence of the Government authority. The action taken in this regard is challenged by the applicant. It gives him a cause

of action, the redressal whereof can be initiated by filing an application under Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"). Thus the grievance in respect of which an application is made had arisen by reason of the impugned order dated 7.7.83 i.e., during the period of three years preceding the date (1.11.85) on which the jurisdiction of the Tribunal becomes exercisable. Hence the fact that the petitioner was required to prefer the application within six months from the date of establishment of the Tribunal as per Section 21 of the said Act, is not in dispute. Moreover the fact that the application ought to have been preferred by the applicant by 1st May, 1986, is not controverted. However according to the applicant, when he approached the Advocate, instead of preferring the application under the Act he preferred an application before the Labour Court, Baroda and the period spent in prosecuting that application should be taken into account as per section 14 of the Limitation Act. These and other factors have been duly considered by us while rendering our decision in the matter. It is significant to note that the applicant approached the Labour Court only for short payment and past retirement benefit whereas in the present case the applicant challenged the impugned order sanctioning permanent absorption and sought for repatriation and that too after a considerable delay. The issues therefore raised by the applicant in the Labour Court and one raised in the original application are totally different. Bearing in mind this clear position we have held that the act of the petitioner in filing the application before the Labour Court and subsequently an action withdrawing the same do not provide a sufficient cause for not making the application within the statutody period.

5. It is well established that the review can not be asked merely for fresh hearing of arguments or for correction of an allegedly erroneous view taken earlier, but only for correction of a patent error of fact or law which stares one in the face without any elaborate arguments being needed for establishing it (see Thungabhadra Industries Ltd., v/s. Government of A.P., A.I.R. 1964 S.C. 1372).

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6. In view of the facts and circumstances as we have gone through, we are satisfied that the applicant has failed to establish any mistake or error apparent on the face of record which may warrant exercise of our power of review under the Act. In our opinion there is no sufficient ground for review and the application is therefore dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN

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