

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX~~

R.A.No. 9 OF 1990
O.A. No. 761 IN OF 1988 ~~1988~~
~~XXXXXX~~

DATE OF DECISION 11-7-1990.

Union of India & Ors.

Petitioner Applicant
(Orig. Respondent)

Mr. J.S. Yadav for Mr. J.D. Ajmera

Advocate for the Petitioner(s)

Versus

M.N. Chauhan & Ors.

Respondent
(Orig. Applicants)

Mr. R.K. Mishra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member,

The Hon'ble Mr. N.R. Chandran, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No* *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No. Yes*

16

O R D E R
IN
R.A.No. 9 OF 1990
IN
O.A.No. 761 OF 1988

Date: 11-7-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

By this Review Application dated 5.2.1990
one of the
the applicant(Original Respondents) seeks review of
the order in O.A.No. 761/88 delivered by one of us
(Mr. M.M. Singh) on 4.1.1990.

2. Rule 17(i) of Central Administrative Tribunal
(Procedure) Rules 1987, requires that the Review
petition shall ordinarily be heard by the same Bench
which has passed the order unless for reasons to be
recorded in writing the Chairman may direct it to be
heard by any other Bench. However, the Supreme Court,
in the case of Amulya Chandra Kalita V/s. Union of
India & Ors., JT 1990(1)S.C.558, having held that
Single Member Bench could not have heard and decided
the matter which was before that Court by Special
leave, this Review Application is ^{being} decided by this two
member bench which includes Mr. M.M. Singh who had
delivered the order which is sought to be reviewed.

3. The decision of the Supreme Court in the above
case was rendered on 16.1.1990. The order sought to be
reviewed was rendered by Single Member Bench on 4.1.90.
From the records of the case as also from the contents
of this review application is clear that the applicant
(original respondent) did not question the legality of
the notification of the Chairman, Central Administrative
Tribunal, issued under Section 5(6) of the Administra-
tive Tribunals Act, 1985, authorising all members of
the Tribunal to function as a Bench consisting of

18

Single Member and exercising the jurisdiction, powers and authority of the Tribunal in respect ~~of~~ ^{of} such cases or class of cases specified in the notification ^{said No. 1/32/87-JA} dated 21st March, 1988.

The applicant thus having acquiesced in the jurisdiction of the single member bench to decide the O.A., we are not required to examine the validity of the order of the Single Member Bench on the grounds of jurisdiction of that Bench to pass the order.

4. Rule 17(i) of Central Administrative Tribunal (Procedure) Rules, 1987 as substituted by Notification No. GSR 10001(E) dated 11.10.88 (w.e.f. 24.10.88) lays down that no petition for review shall be entertained unless it is filed within 30 days from the date of the order of which the review is sought. The order sought to be reviewed is dated 4.1.1990. Counting 30 days from 4.1.90 by excluding the date of the order, 30 days complete on 3.2.90. Thus the application, on the face of it, has not been filed within 30 days of the order. No explanation whatsoever has been tendered in the application for not filing it within the prescribed time. The copy of the order enclosed with the application contains an endorsement to the effect that the same was prepared on 4.1.90, the date of the order. The copy of the order was thus made available to the applicant on the very date of the order. The application is liable to be rejected even on the ground that it has not been filed within the prescribed time limit.

5. However, we looked into the merits of the application also. The first ground advanced for review is that the Respondent (the applicant herein) had produced letter dated 20.6.1987 of Tribal Develop-

ment Department of Government of Gujarat addressed to Assistant Director Telecom(R&E) to the effect that the employees to be eligible for the payment of Tribal Area Allowance (TAA for short) should be both posted and residing in the Tribal area, that this letter was taken on record with the consent of the applicants' (respondents herein) advocate and its contents urged during argument, and that the said letter and the contents though urged were not taken into account by the Tribunal. The second ground for review is based on the following contents of Swamy's Compilation of FRSR Vol.V HRA and CCA :

"(iii)

The compensatory allowance should be given for the period during which he serves in Scheduled and/or Tribal areas and not otherwise. For the purpose of service in the areas spells of leave in respect of which (i) the authority sanctioning the leave certifies that on return to duty at the station from which he proceeded on leave or at another station in which he will be entitled to a similar allowance and (ii) the Government servant certifies that he or his family or both resided for the period for which the allowance is claimed at any of the stations shall be taken into account."

It is thus argued that a mistake on the face of the record crept into the judgment.

6. The above grounds for review do not stand scrutiny. Regarding the letter dated 20.6.87 of the Tribal Development Department of Government of Gujarat, that letter addressed by Section Officer, Tribal Development Department to Assistant Telecom (R&E) C/o the General Manager Telecom, Gujarat Circle, Ahmedabad on the subject of Admissibility of TAA to the staff working at GIDC Exchange, Ankleshwar is reproduced below:

"I am directed to refer your letter No. EST/ 18-11/III dated 19-2-87 on the subject noted above and to state that Government servants

will be entitled to draw tribal allowance provided he stays also in the tribal area. It is not enough that his place of duty is in the tribal area for being entitled for tribal allowance."

There is no doubt that the contents above saying that the eligibility to TAA arises from the posting and residing in the Tribal area are the same as contents of letter of Executive Engineer-I GIDC Ankleshwar which also says that the eligibility to TAA arises from the twin factors of residence and posting. Such original arguments of the respondent were examined and found not acceptable and the part of the judgment which disposed of such arguments is reproduced below:

"However, the Ministry of Finance, Department of Expenditure office memorandum dated 23rd September, 1986, supra, should be the authority in this respect so far as the Central Government employees are concerned. This memorandum of the Ministry of Finance is clear that "Central Government employees posted (underscored for emphasis) in Tribal Talukas/Pockets of Gujarat State" mentioned in the Annexure I & II are eligible for payment of T.A.A. This memorandum does not say that besides being posted in Tribal Talukas/Pockets the Central Government employees should also be residing in such Tribal Talukas/Pockets in order to be eligible for the payment of T.A.A. The letter of Executive Engineer-I, G.I.D.C., Ankleshwar, supra, is from an authority which has no competence to vary the conditions of payment of T.A.A. laid down by the Ministry of Finance, Department of Expenditure, Government of India. No acceptable and proper authority for denying payment of T.A.A. to such employees as are posted in the Telephone Exchange located in Ankleshwar G.I.D.C. area which area falls in the limits of Piraman and Bhadkodra villages which figure in the list of T.P.A., villages in Ankleshwar Pocket of Ankleshwar Taluka has been pointed out by the respondents."

(emphasis provided now)

The reasons for which A-7 was not acceptable to deny the claim of TAA equally apply to the letter of 20.6.1987 the contents of which got comprehended in the words of the order "no acceptable and proper authority.....".

✓

7. Regarding the extract from Swamy's Compilation reproduced above, it is not the assertion of the applicant that the same was relied upon in pleading or submissions during the hearing of the O.A. It is also not the say of the applicant that this compilation was not in his possession when the O.A. was heard. It is also not the say of the applicant that the above contents deserve higher creditability and authority than the contents the Government of India, Ministry of Finance, Department of Expenditure, office memorandum No. 20022/2/86-E IV dated 23rd September, 1986 which has been relied upon in the order as is clear from the part of the judgment which is extracted above.

8. In view of our above scrutiny revealing that no sufficient grounds for review have been made out, the application is liable to be rejected. We hereby reject the same.

N.R. Chandran
(N.R. CHANDRAN)
JUDICIAL MEMBER

M. M. Singh
11/7/90
(M.M. SINGH)
Administrative Member.