

CENTRAL ADMINISTRATIVE TRIBUNAL

Calcutta Bench

MA.143 of 1997
(OA.492 of 1996)

Date of Order: 22.9.97.

SINGLE BENCH

Present: Hon'ble Mr. D. Purkayastha, Judicial Member.

UNION OF INDIA & ORS.
(EASTERN RLY)

(In the MA)

-VS-

PRAVAT KR DAS

For the petitioner: Mr. A.K. Banerjee, Counsel (In MA)

for the respondents: Mr. P.L. Bose/A.Chakraborty,
Counsel. Counsel.

Heard on: 22.9.97

O R D E R

D. Purkayastha, JM

This MA has been filed for recalling an ex-parte order dated 20.3.97 on the ~~above~~ ground that on 20.3.97, the advocate of the respondents could not appear before the Court for personal difficulties when the case was taken up for hearing, thereby, there has been injustice in this case.

It is stated by the Ld. Advocate Mr. Banerjee that on the ground of sudden illness of his wife, and it was not possible for him to attend the Court in the second half, i.e. after recess on 19.3.97 a request letter was submitted to the Registrar, Central Administrative Tribunal, Calcutta with a prayer for adjournment of the case and fixing the same on some other date. Ld. Advocate Mr. Banerjee also requested Mr. Samir Kumar Ghosh, ld.counsel, to obtain adjournment and for another date for hearing in the said matter on his behalf. At the first instant, the next date for

hearing was fixed on 2.5.97 on prayer of Mr. Ghosh. Mr. Ghosh, after obtaining the date, intimated the date to ld. advocate Mr. Banerjee. But with utter surprise, the ld. advocate came to learn that the said case which was finally fixed for hearing on 2.5.97, ^{the date} has been changed and the matter was passed over to the next day i.e. on 20.3.97 for hearing and on 20.3.97, as such, he could not appear on the ^{time} ~~date~~ of hearing on 20.3.97. The matter was heard ex-parte and the same has been disposed of by allowing the application.

The said application is resisted by the opposite party by filing written statement. They denied the averments made by the petitioners who are the respondents of the original application. It is stated that the matter was called on 19.3.97. Ld. senior advocate, Mr. Ghosh, on behalf of the applicant/respondents, prayed for time but the ld. advocate for the applicant of the OA No. 402 of 96 ~~this~~ had seriously objected to the said prayer and had drawn the attention to the Order dt. 25.2.97 passed by Hon'ble Dr. B.C. Sarma, Member, directing that if no reply is filed or none appears for the respondents on that day, matter shall be heard without reply. In view of the aforesaid order passed by the Tribunal, ld. counsel for the applicant/respondents did not comply with the direction of the order passed by the Tribunal. Ld. advocate on behalf of the applicant/respondent did not appear on 19.3.97 and on 20.3.97 though there was specific direction in the order passed by the Tribunal. As a result, the said matter was decided on merit on 20.3.97. Ld. advocate, appearing on behalf of the applicant/respondent, did not appear almost all days and as a result thereof, due to non-availability of ^{the original OA,} ~~filed~~ ^{by the respondents/applicant,} ~~he~~ has been suffering from 14.2.96 in these hard days. The Hon'ble Tribunal was pleased to pass over the said matter and fixed it as passed over on the next date that is, on 20.3.97. So, that application is devoid of merit and is liable to be rejected with cost.

Heard ld.advocates of both sides. I have gone through the application submitted on 19.3.97 by the advocate Mr. Banerjee where he requested to adjourn the case for that day only and to fix any other day for hearing. I have also gone through the cause list dt. 19.3.97 and it is found that there was some over-writing in the cause list and that over-writing, in fact, indicates that the case was adjourned to 2.5.97 but the order sheet shows that the case was passed over the cause list. It is true that the court's order should prevail over. But at the same time, it is only settled law that nobody should suffer due to mistake of the Court. Hon'ble Apex Court (in AIR 1988 SC 1531: A.R. Antulay's case) held that basic fundamentals of the administration of justice are simple. No man should suffer a wrong by technical procedure or irregularities. Rules of procedures are the hand-maids of justice and not the mistake of the justice. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied."

I have asked ld.advocate Mr. Samir Ghosh who is a senior member of this Tribunal. He also stated before me to-day at Bar that initially the case was adjourned to 2.5.97 and subsequently on raising objection from the other side the case was re-fixed for hearing on 20.3.97 but ld,counsel Mr. Ghosh, further submits before me that the adjournment date as shifted to 2.5.97 had been communicated to the ld. advocate concerned. However, I am not entering into the controversy between the statements made before me by the ld. counsel for both the parties. It is a basic principle of law that nobody should be denied hearing in rendering justice to the parties. Since there is a controversy regarding fixation of the date, I think the case should be recalled for hearing after setting aside the ex-parte order.

Ld.advocate, appearing on behalf of the application in the Original Application raised preliminary points regarding maintainability of the application. for setting aside the ex-parte order.

First contention of the ld.advocate is that the Deputy Chief Personnel Officer, Eastern Railway, Calcutta is not respondent in this case. But, the application has been filed by the Deputy Personnel Officer, Eastern Railway, Calcutta on behalf of the respondents of the Original Application No.492/96 and ld.advocate Mr. Chakraborty appearing in the O.A. has drawn my attention to sub-clause 2 of rule 16 of CAT(Procedure) Rules, 1987 which runs as follows :-

"(2) Where an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal within 30 days from the date of the order of the Tribunal for an order for setting it aside if such respondents satisfies the Tribunal that notice was not duly served or that they were prevented by any sufficient cause from appearing when the application was called for hearing the Tribunal may take an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit and shall appoint a day for proceeding with the application".

Referring to this provision, ld.advocate Mr. A. Chakraborty submits that since the application has not been filed by any of the respondents in the Original Application, the application cannot be entertained, even if there is a merit in this case. He has also drawn my attention to rule 9, sub-clause 3 of the CAT(Procedure) Rules, 1987 where is stated that:

"(3) Where an application is filed by an agent, documents authorities him to act as such agent shall also be appended to the application".

Since, no authorisation has been appended to the application as per submissions of the ld.advocate Mr. Chakraborty, the application should not be deemed to be an appropriate application for the purpose of recalling the ex-parte order and the application ~~xxx xxx~~ should be dismissed. Ld.counsel for the respondents, Mr. Banerjee has drawn my attention to the memorandum/office order No.P/CC/Circulation/92 dt. 25.3.92 where it is mentioned that Deputy Chief Personnel Officer is authorised to sign the application and it is a general circulation for guidance of the department concerned. So, in view of the aforesaid circulation, I find that the Deputy Chief Personnel Officer is a competent person to sign on behalf of the respondents but facts remain

that the respondents of the Original Application is found not diligent at all in conducting the case inspite of the strong order passed by the ld.brother Mr. B.C. Sarma, Member(A), they did not file written objections. Since, I decided to hear the case on merits. after giving opportunity to the respondents of the OA, Order dated 20.3.97 passed by me, ^{is truly recalled} on condition that applicant of this MA should pay a cost of Rs.500/- to the respondents of the MA. Accordingly, the case is restored to my file for hearing. Mr.Chakraborty, ld.advocate, prays for an expeditious hearing of the case. Thereby, I fix the case for hearing on 1.10.97. It is mentioned that if the cost is not paid by the next date i.e. 1.10.97 applicant of the MA case will not be allowed to be heard. ^{original order dt 20.3.97} ~~will be restored~~ ✓

Accordingly, M.A. is allowed.

AKM
22/9/97
(D. Purkayastha)
Member(J)