

H.P. No. 378 of 1996

H:

C.A. No. 210 of 1991

this the 9th day of July 1996

Hon'ble Mr. D.C. Verma, Member (J)

The applicant in C.A. No. 210/91 has filed H.P. No. 378/96 for modification of the order dated 20.8.92 passed in C.A. No. 210/91 Syed Afzal Mustafa & 20 others Vs. Union of India & others.

2. To appreciate the points raised before this Bench, the brief facts of the case is given below :

Syed Afzal Mustafa & 20 others had filed C.A. No. 210/91 for benefit of special pay, arrears with interest etc. The said C.A. was allowed as per the detailed order dated 20.8.92 by a Single Member Bench of this Tribunal. However, there was no specific direction for payment of interest on arrears.

3. Subsequently, the applicant filed C. contempt petition No. 24/93 due to non-compliance of the order passed in the C.A. No. 210/91. The C. contempt Petition was rejected by Division Bench order dated 26.1.96; wherein it was noted that "..... we do not find any specific direction or even a finding in the judgment in regard to claim of the applicant for interest on arrears."

4. It may, however, be noted that against the order of the Tribunal dated 20.8.92 passed in C.A. No. 210/91, Union of India preferred a SLP (Civil) No. 2193/93 Union of India & others Vs. Syed Afzal Mustafa & 20 others. The Hon'ble Supreme Court has vide its order dated 29.4.93 stayed the operation of the judgment and order dated 20.8.92. However, as mentioned in the C. contempt No. 378/93 filed by the applicant, it was dismissed on 15.1.95.

5. The learned counsel for the applicant has submitted that as the O.A. was decided by Single Member Bench and the relief for interest was, by mistake, not granted, the said judgment can be modified by another Single Member Bench and for this purpose this M.P. No. 378/96 may be treated as Review Application.

6. On behalf of the respondents, Dr. D. Chandra has filed an objections <sup>on application</sup> for modification of the order and for converting the M.P. No. 378/96 as Review Application.

7. After hearing the learned counsel for the applicant, I am of the view that the submissions of the learned counsel has no merit. The O.A. was decided in August, 1992 and if no relief for interest was granted, the applicant should have filed a Review Application within the time prescribed therefor. This was not done.

The learned counsel has submitted that the fact came to knowledge only after the Counter affidavit was filed by the respondents in the C.C.P. 24/93. It is seen that Counter affidavit in the said C.C.P. was filed by the respondents on 16.11.95. Therefore, even if, for argument sake, the submission of the learned counsel be accepted, the Review Application should have been filed <sup>thereafter</sup> within the period prescribed for filing Review Application. Even that was not done. From any angle, the application for review of the judgment and order dated 20.8.92 is barred by limitation.

8. The submissions of the learned counsel for the applicant cannot be accepted on another ground also. Against the order of the Tribunal dated 20.8.92, Union of India filed SLP and admittedly the SLP was dismissed. The order of the Tribunal, therefore, got merged with

the order of the apex court. This Tribunal, therefore,  
~~the~~ cannot modify the earlier order.

9. In view of the above, the M.P. is not  
maintainable and is rejected.

  
MEMBER (J)

LUCKNOW: DATED: 9.7.96  
GIRISH/..