

CEMENT AND CONCRETE IN PAKISTAN

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...eview application no. 391/91

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..... No. 19 A 1992.

Smt. Priyanka Saxena and another v/s applicants.

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Non-Ind. C.M.P. - San, Number Judicial.

This review application is being filed
against the impugned judgment and order dated
10.9.92 passed by this Tribunal in the aforesaid
O.M. No. 19/92 whereby the application of the
applicant is being dismissed. A perusal of the review
application shows that this is a re-iteration of those
very views points and grounds as set out in the
main application and the reviewer applicant has
contended, inter alia, that the impugned judgment
and order passed by this Tribunal dated 10.9.92 is
perverse, in as much as there were irregularities
and mistakes apparent on the face of record and as
such the review application be allowed and the
impugned judgment and order dated 10.9.92 be
set aside and the above O.M. No. 19/92 be allowed.

2. This is worth while mentioning this fact.

Hon'ble Mr S.N. Prasad (J.M.) for reviewing the order under Section 22 (f) of the Act read with Rules 17 of the Central Administrative Tribunal Rules 1988.

2. Jurisdiction of the Tribunal

The applicants declare that the subject matter, the parties and the grievance of the petitioner which are to be redressed in this petition arises out of the order passed by the Tribunal and as such, it is within the territorial jurisdiction of the Tribunal.

3. Limitation

That the present petition is within the limitation as the order dated 10.9.1992 has been received on behalf of the petitioners by his advocate on 8.10.1992 when delivered by the office and a period of limitation will expire on 7.11.1992. As such, the petition is within the limitation.

4. Particulars in the facts of the case

The applicants submit as under:

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4. (i) That the relevant question, which should have been decided by the Hon'ble Tribunal on the admitted facts between the parties, and it was whether in the absence of any document (resignation letter), order on it and any assertion of the fact about the communication of the order of acceptance of resignation was in Issue, whether the case is that Resignation even if tendered was never accepted, and it is not on record of the case that if it was accepted then by whom it was accepted and on what date it was actually accepted and on what date the same was communicated either to the deceased employee or to the parties, when the petitioners have already brought this fact to the notice of the opposite parties just after the death of the deceased employee and at no point of time till the argument was heard neither the documents were placed nor pointed out even in any manner and on the admitted facts in the pleadings of the parties and the arguments whether any inference can be drawn that the resignation even if tendered was not withdrawn and was accepted by the opposite parties in the absence of the aforesaid documents or averments to the effect as stated above.

As such, on the basis of the pleadings of the parties,

the question which arises for consideration is

A. Whether on the admitted facts contained in paras 4 (iv) and 4 (v) of the petition and non-filing of the counter reply by any of the opposite parties and non-denial of the correctness of the aforesaid facts in the counter reply filed by an officer, who was neither a party to the case nor was authorised by the opposite parties to file a counter reply and reiteration of the facts of the petition as contained in paras 5 and 6 of the Rejoinder reply read with the averments of facts in paper No. 3, 4 and 9 of Compilation No. 2 referring to the entire departmental correspondence between the opposite parties after submission of the resignation from the year 1963 to 1966 which establishes beyond reasonable doubt and also proved in unequivocal terms that the alleged Resignation, even if tendered, was never acted upon by the deceased employee as it was withdrawn in July 1963 nor it was ever accepted by any officer as it was revoked before it can be accepted and the opposite parties, in their correspondence indicated it that is why the opposite parties inspite of the specific order of the Tribunal order passed after hearing, the parties on 10.8.1992, did not produce it upto the date of hearing of the case, which was to the effect

that '... the same (resignation) be filed
in original along with the other documents
pertaining to the period prior to the tendered
resignation and subsequent thereto before the
Court within three weeks.'

The order passed by the Tribunal requiring the documents to be filed by opposite parties were neither filed within the time allowed by the Court, nor were produced or shown when the case was heard after passing of the order by the Hon'ble Tribunal that the documents asked for, have not been produced as such, an adverse inference will be drawn against the opposite parties for not filing of the required document or correspondence referred to above, which was material for deciding the issue as such, the Hon'ble Tribunal ought to have decided the question by drawing an adverse inference against the opposite parties on the aforesaid admitted facts but the Hon. Member of the Tribunal instead of drawing an adverse inference against the opposite parties ~~and~~ have decided the case after drawing an inference against the petitioner^{only on the basis of an inference} which would not have been drawn in the circumstances of the case.

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4. (ii) That on the admitted facts and circumstances ~~and therefore~~ ^{and} the voluminous documents on record which were sufficient not only to draw an inference against the opposite parties but were also sufficient to hold that even if any resignation was ever tendered, by the deceased employee then it was never acted upon or accepted and there could not be any presumption in law or on facts unless and until ~~some~~ document relating to resignation, order passed on the resignation, the name of the officer, who accepted it and, thereafter, its communication is not established especially, when the matter was raised before the opposite parties just after the death of the deceased employee and was pressed before the Hon'ble Tribunal at the time of the argument and the Hon'ble Tribunal did not consider the admitted facts that is the reference of the correspondence of the opposite parties on the basis of the documents while deciding the question in Issue relating to Resignation by the deceased employee.

4. (iii) Whether the Hon'ble Tribunal could have presumed on the basis of Annexure R-III filed with the Counter Reply, which

was not certified by any of the opposite parties to be a true copy of its original and the original was also not produced inspite of the Tribunal's specific order. Annexure No. R-III filed with the counter reply, was not an admissible document for drawing any inference for the fact that the resignation was accepted on 7.8.1963 when the document is said to have been prepared on or after March, 1970 and the signature on the photocopy of the document can not be presumed unless and until it is proved ^{by law} in any manner, only on the basis of assertion of the facts in counter reply that the record relating to the petitioners case has already been weeded out but it has not been stated either in the counter reply or in the arguments that how Annexure-R-I and R-II and R-III have been filed which relates to the year 1970, 1979 and 1980 when according to the assertion ^{the} matter was finally decided ^{by the Tribunal} in 1991. As such, the Hon'ble Tribunal was not justified in presuming and holding that the record relating to the petitioner, which was directed by the Hon'ble Tribunal to be produced has been weeded out when the opposite parties have decided ^{to} produce the documents by

From the record pick and choice which suits them and not to produce the entire record relating to the deceased employee then the presumption should have been drawn that the Record has not been weeded out and a false and incorrect plea has been taken because, the documents relating to the petitioner for the year 1970, 1979 and 1980 have been produced but the Hon'ble Tribunal's Order for producing the entire record relating to resignation and, thereafter, have not been produced for which an adverse inference should have been drawn against the opposite parties ~~and~~ as they themselves have produced some documents from that record which suits them because in the absence of the documents relating to resignation its acceptability communication coupled with the facts the Issue of resignation can not be decided on a presumption. The presumption in law, or on fact could not be in any manner in which it has been drawn ~~by the~~ basis of inadmissible documents that resignation if tendered, was presumed to have been accepted.

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4. (iv) Because, on the admitted facts as stated in counter reply filed on behalf of the opposite parties as contained in para-20 read with annexure-R-V the petitioners were entitled to ex gratia payment to the family of the deceased employee which have already been granted to several of such retired Railway Employees and inspite of the facts that this plea was raised in the pleadings and the relief was also claimed and it was also placed in the argument that the opposite parties have asked for certain documents which was also submitted but this matter was not considered and decided by the Hon'ble Tribunal in its judgment although an interim prayer was also made for the same effect in the petition and it was pointed by the order dated 15.4.1992 passed by the Hon'ble Tribunal which was to the effect that the Respondents were directed to start paying family pension to applicant No. 1 within six months from the date of the communication of the order but the same was also not complied with on the date when the case was heard by this Hon'ble Tribunal and this question was neither

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considered nor decided.

4. (v) Because, the Hon'ble Member of the Tribunal failed to ~~take into~~
~~consideration~~
~~the effect of Tribunal's Order dated 16.4.1992, 22.5.1992~~
~~obeying and~~
~~and non/filing of counter affidavit inspite of Hon'ble~~
~~Tribunal order by any of the opposite parties in~~
~~pursuance to the order dated 22.5.1992 as well as~~
~~non-compliance of Hon'ble Tribunal's order dated~~
~~10.8.1992, were not considered ~~which was~~ on the basis~~
~~of admitted position in the case while the opposite~~
~~parties should not have been heard unless and until they~~
~~comply the Hon'ble Tribunal's Order and as they fail to~~
~~comply them ~~as such~~, the Hon'ble Tribunal should have~~
~~drawn an adverse inference against them because of non-~~
~~complying the Hon'ble Tribunal's Order as stated above,~~
~~but inspite of the fact that these orders were placed~~
~~before Hon'ble Tribunal at the time of hearing but~~
~~the matter has not been considered by the Hon'ble~~
~~Tribunal although, the non-compliance amounts to~~
~~disobidiance of the Hon'ble Tribunal's Order because~~
~~it is admitted to the opposite parties that they decided~~
~~flat basis~~
~~the case finally in May 1991 but it was argued before the~~

Hon'ble Tribunal that although the matter was decided in May 1991, which must have been decided on the basis of record relating to the resignation of the petitioner and if the same record was available on that date when the matter was considered and decided then, how after the decision of the representations which should have been on the basis of the personal record containing resignation acceptance and, its communication, then how it can be said that the records have been weeded out and if the fact that the record was weeded out, then, how and on the ~~basis~~ basis of what record and document, the matter has been decided in 1991 and this matter has ^{not} been considered while deciding the question that the record has been weeded out as stated in the counter reply. It is also pertinent to mention in this regard that the argument to this effect were placed before Hon'ble Tribunal that only those records which have outlived their lives and are not required to be retained should be destroyed ^{and that too,} under the specific orders ~~and~~ APO/SPU after making out a proper inventory in ~~register~~. In this case,

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neither the specific order of APO/3PO for weeding out of the record has been produced nor the inventory in Register, has been placed before the Hon'ble Tribunal and in the absence of these documents the Hon'ble Tribunal was not justified in holding that the record was destroyed as provided in Annexure-R-IV and in holding so the Hon'ble Tribunal have ^{also} overlooked paras 5, 6 and 7 ~~also~~ and if they would have been taken into consideration while deciding whether the weeding of the record was justified or not then it would have been held that no record has been weeded out as the same cannot be weeded out under the circumstances of the case, when the matter was pending consideration from 1967 till 1991 when the case was decided in 1991 by the opposite parties. The correctness of which was under challenge.

4. (vi) That the Hon'ble Tribunal has incorrectly relied upon Annexure-R-III filed with counter reply which is not a relevant and admissible document in the facts and circumstances of the case, and it can not be relied upon

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in view of the long standing correspondence between the opposite parties from 1963 to 1966 which was to the effect that the Resignation was withdrawn by the deceased employee much before the notice period and the alleged date of acceptance and the deceased employee was required to obtain the Medical Fitness from the Railway Medical Doctor as is evident from paper No. 3, 4 and 9 of compilation No. 2, and these facts have not been controverted either by any document or by assertion.

4. (vii) Because the Hon'ble Tribunal has incorrectly overlooked the specific arguments which were to the effect that even the assertion relating to the actual order passed by the opposite parties have not been made in the counter reply nor the same was produced at the time of argument by which it can be inferred that the applicants-petitioners are not entitled either to Family pension, or ex gratia payment of pension or the appointment on compassionate ground in the absence of any admissible document or paper from which it can be inferred beyond reasonable doubt that the ~~resign~~ resignation was not withdrawn and accepted by the

Res. 4 (vii)

Competent Authority.

4. (viii) Because the Hon'ble Tribunal failed to consider the argument which in the alternative even if the resignation was submitted and the deceased employee died before its acceptance and communication then, in the facts and circumstances of the case it will be a retirement because of medically incapacitation of the deceased employee because of long standing mental ailment as is evident from the facts and circumstances of the case, these question should have been considered ~~by~~,ⁱⁿ the judgment which is passed on the presumption of the fact that Digamber Nath, the uncle of the elder brother of the deceased employee was instrumental in getting the case concocted when the facts are not so on the record.

5. Grounds for relief with legal provision

That the petitioners are aggrieved from the dismissal of the claim petition because of non-consideration of relevant and admitted facts, which were placed at the time of the arguments as well as the ground, by which it

Sec 1(1)(v)

was stated that the opposite parties have on the one hand, failed to produce the record relating to the deceased employee had already been weeded out in view of Annexure-R-IV filed with the reply which clearly produce that the record can only be weeded out if not required to be retained and the weeding is to be done under the specific orders of APO/SPO after making the proper inventory in the register of records ~~but~~ and in case the presumption is to be drawn in view of the several orders passed by the Hon'ble Tribunal, then it is to be withdrawn taking it to be correct that the resignation even if submitted then it was withdrawn before date fixed and there was no occasion for its acceptance by any one as is apparent from the correspondence between the opposite parties from July 1963 upto 1966. Hence, the present petition on the following grounds:

5. (A) Because, the death of the deceased employee is admitted and filing of the representations from 1967 till 1990 are also admitted. It is also admitted to the opposite parties that the representations were decided in May,

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1991 but the order said to have been passed, has not been produced inspite of the order and direction by the Hon'ble Tribunal. Hence a presumption under law on the admitted facts is to be drawn against the opposite parties taking it for granted that in case, the record if it would have been produced in compliance to the Hon'ble Tribunal's order, then the same would have gone against the case taken by them in the counter reply.

5. (B) Because, in any case, the Hon'ble Tribunal, who had failed to consider the plea that under Annexure-R-V filed with the counter reply, the petitioner No. 1 was in case entitled to family pension with effect from 1.1.1986 and on this argument no finding has been recorded, nor the same has been considered in any manner by the Hon'ble Tribunal.

5. (C) Because, the Hon'ble Tribunal has wrongly concluded that there was no sufficient material for holding that the resignation was not withdrawn and was not accepted

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as stated by the petitioners only on the ground that the record has been weeded out on the basis of Annexure-R-IV when on the basis of Annexure-R-IV, the record cannot be weeded out. In view of the admitted fact that the petitioners have stated that they did not possess the true copy of paper No. 18 but it is with the opposite parties and the matter was decided in 1991.

5.(D) Because, there is an error apparent on the face of the record inasmuch as that it is evident from admitted record that the deceased employee, who had tendered the resignation in July 1963 has withdrawn the same in July, 1963 and, thereafter the document mentioned in paper No. 3, 4 and 9, clearly establishes and proves that till 1966 the resignation was not accepted and no cogent and admissible evidence has been produced before the Hon'ble Tribunal to establish that the resignation was accepted as stated in the counter reply and it has only been concluded only on the basis of Annexure-R-III, which is admissible in evidence in any manner in view of the fact it is a photocopy, which does not bear any endorsement to

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the effect that it is a true copy of the original and when original was also not produced before the Hon'ble Tribunal nor any averment has been made that how this document has been placed and filed when all the records relating to the deceased employee has been weeded out and, it has also not been mentioned in para-11 of the counter reply that whose signatures are on Annexure-R-III, which may establish that whether the officer, if any, has prepared it, was obtained to write on it without mentioning the order of acceptance on it and a specific ground in this regard was taken by Ground & 7(B) specially, when it is a case of the opposite parties that the service of the deceased employee was not ever terminated by the respondent.

6. Prayer

Wherefore, it is prayed that the Hon. Member of this Hon'ble Tribunal, who have decided the original application No. 19 of 1992 (L), be pleased to allow the Review Petition and to hear the arguments on the original application

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to decide the matter after considering the facts and circumstances as well as the grounds, and, then to pass an order as prayed in the ~~p~~ original application at an early date.

Lucknow:

Date: 12.10.92

(Counsel for the Petitioner)

15/10/1992

Sahai

Ahla

(Akhilesh Sahai)
Advocate

N.B My Pow: is in OA Case No 19/92 (L) Ramila Sena
and anw 18. 10.92

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