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CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

R.A. No.15 of 1990
(O.A. No.46 of 1990)

JASODA B. YADAV & ORS.

VS

UNION OF INDIA & ORS.

Counsel present at the time of the final hearing of the
Original Application:

For Applicants : Mr. D. B. Walthare, counsel

For Respondents: None

Disposed of by Circulation :

Date of order :

26-6-90

ORDER

A. P. Bhattacharyya, J.M.

This application under section 22(3)(f) of the Administrative Tribunals Act, 1985 has been filed by Smt. Jasoda B. Yadav and 3 others against the Union of India, represented by the Secretary Department of Posts and 4 others for reviewing the decision passed by this Tribunal in OA 46 of 1990 on 19.1.1990.

2. The applicants filed an original application in this Tribunal numbered as 46 of 1990 praying for quashing the suspension order, the order imposing penalty and the appellate order passed against Brijlal Yadav, their predecessor in ~~interest~~ ~~intestate~~. It may be mentioned that applicant No. 1, Smt. Jasoda is the widow, applicants 2 and 3 are the daughters and applicant No. 4 is the son of Brijlal Yadav. Brijlal Yadav was a Sorting Postman at Gondia Head Post Office. As a disciplinary enquiry was under contemplation he was placed under suspension by an order passed on 3.10.1974. On 11.2.1975 a major penalty chargesheet was

issued against him. After holding the enquiry a penalty of compulsory retirement was imposed on him. Against that Brijlal preferred an appeal which was rejected. On the basis of a complaint lodged by the concerned authority a criminal case was also started against the said Brijlal. Ultimately he was acquitted of the criminal charges levelled against him. Brijlal made a representation quoting the decision of acquittal passed by the criminal Court and prayed for setting aside the penalty imposed on him. His prayer was rejected. Brijlal died on 15.7.1988. After his death the present applicants consulted their advocate and filed the original application in the Tribunal. By its order dated 19.1.1990 the Tribunal dismissed the application as stale and barred by limitation. Being aggrieved by that order the applicants have filed this review application on the grounds that in consideration of the peculiar facts and circumstances of the case and in view of several decisions passed by the Supreme Court and other Tribunals this Tribunal should not have dismissed their original application as well as their miscellaneous petition in which prayers were made for condonation of delay.

3. On going through the contents of the review application and on a consideration of the entire matter I cannot but hold that this review application is not maintainable. Under Order 47, Rule 1, C.P. Code a party aggrieved by a decision may apply for a review on the ground of discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision was taken, or on account of some mistake or error apparent on the face of the record. The grounds taken by the applicants in this review application do not come within the purview of review as mentioned above. Simply they have stated that in view of certain decisions the Tribunal should have condoned the delay in filing the original application and should not have dismissed it summarily. I must say that the applicants have confused the power of review with appellate power. In my opinion this Tribunal cannot sit over the judgment passed by it previously on some grounds

which do not come within the purview of review. It may be mentioned that by an order passed on 3.10.1974 Brijlal Yadav was placed under suspension. Thereafter a major penalty chargesheet was issued against him and after holding an inquiry on the basis of that chargesheet a penalty of compulsory retirement was imposed on him. The appeal preferred by the applicant against that order was rejected by the Appellate Authority on 17.6.1980. Brijlal Yadav took no steps thereafter and only on 9.9.1987 i.e., long after 7 years of rejection of his appeal he submitted his representation to the concerned authority for recalling the penalty imposed on him in view of the fact that he had been acquitted by the criminal court. It may be mentioned that on the basis of a complaint lodged by the concerned authority a criminal case was started against Brijlal and ultimately on 1.6.1987 he was acquitted of the charges. On 11.11.1987 a reply to the representation submitted by Brijlal on 9.9.1987 was given. Even after that no steps were taken by him. Brijlal died on 15.7.1988. After his death the present applicants consulted their advocate and having been advised they filed the original application in this Tribunal on 21.7.1989. In their miscellaneous petitions the applicants had not been able to give any satisfactory explanation for the undue delay in filing such application either by Brijlal or by them. So considering everything this Tribunal was of opinion that the applicants' claim was hopelessly barred by limitation. In my opinion the applicants have not been able to establish any case on the basis of which the power of review can be exercised. It is quite well settled principle of law that the power of review cannot be exercised on the ground that the decision was erroneous on merits. So considering all I hold that as the grounds taken by the applicants do not come within the purview of review as contemplated in Order 47, Rule 1, C.P. Code this application is liable to be rejected.

W. Bhattacharya
(A. P. BHATTACHARYYA)
JUDICIAL MEMBER