

(3)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : CAMP : NAGPUR

St. No. 28 of 1989
M.P. No. 587 of 1989
M.P. No. 804 of 1989

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member
Hon'ble Mr. P.S.Chaudhuri, Administrative Member

SMT. JOSODA & ORS

VS

UNION OF INDIA & ORS

For the applicants : Mr. D.B.Walthare, advocate

For the respondents : None

Heard on : 17.1.90 : Order on : 19.1.90

O R D E R

A.P.Bhattacharya, J.M. :

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Smt. Jasoda Yadav and three others, who are ^{The} legal representatives of Brijlal Yadav, against the Union of India, represented by the Secretary, Deptt. of Posts and four others.

2. In their application, the applicants have prayed for declaring that the suspension order dated 3.10.74 issued against Brijlal Yadav is illegal. They have also prayed for setting aside the order passed by the appellate authority on 19.10.80 on the penalty imposed on the said Brijlal Yadav in the departmental enquiry held against him. They have further prayed for payment of arrears consequential to the aforesaid prayers.

3. Brijlal Yadav was a Sorting Postman at Gondia Head Post-office. A major penalty charge-sheet was issued against him on 11.2.75. Prior to that he was placed under suspension. After holding an enquiry, which was attended to by him, a penalty of compulsory retirement was imposed on him

M. Jm

by his disciplinary authority. Brijlal Yadav preferred an appeal which was rejected by the appellate authority on 19.10.80. On the basis of a complaint lodged by the authority, a criminal case was also started against Brijlal Yadav. In that case an order of acquittal was passed by the court concerned on 1.6.87. Brijlal Yadav made a representation for re-calling the punishment imposed on him in view of his acquittal by the criminal court. A reply to his representation was given. He made further representation. On 15.7.88 Brijlal Yadav died. Thereafter, the present applicants after consulting an advocate filed the instant application before this Tribunal. On a consideration of the facts and circumstances of the case, we find that this application cannot be entertained as it is hopelessly barred by limitation.

4. We have already mentioned that the appellate order which the applicants desire to get set aside was passed on 19.10.80. Brijlal Yadav died on 15.7.88. Curiously enough, although he was alive for more than 8 years after the passing of the appellate order, he did not think it necessary to challenge that order and the order of suspension which was passed six years prior to that in the appropriate forum. We have mentioned that on the basis of the complaint lodged by the authority concerned, a criminal case was started against the said Brijlal Yadav. From Annexure-19 to the application, we find that in that criminal case Brijlal Yadav and another were acquitted of the charges levelled against them. The judgement was passed on 1.6.87. Then and then only, Brijlal Yadav thought it wise to move the concerned authority for redressal of his grievance. Annexure-20 shows that as late as on 9.9.87 he submitted representation for recalling the penalty imposed on him in view of his acquittal by the criminal court. A proper reply to his representation was given on 11.11.87 as we find from Annexure-25. He was informed that a departmental enquiry had no concern with a proceeding in a criminal court. We do not find that the said reply was in any way wrong. The law is quite well settled on that point. Even after

M. *[Signature]*

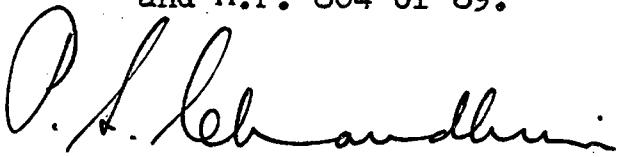
(S)

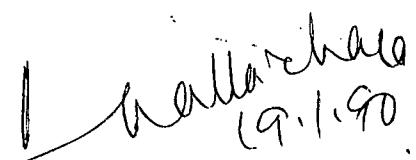
: 3 :

getting that reply, Brijlal Yadav made another representation on 10.12.87 (vide Annexure-27). Unfortunately, he died on 15.7.88. It is the contention of the applicants that after his death they consulted their lawyer on 22.9.88 and after that filed this application before this Tribunal on 21.7.89. In our opinion, the laches or delay during the intervening period remains unexplained. In their M.P. No. 587 of 89, the applicants have simply stated the same facts which are in their original application. From the averments made in the said Misc. Petition, we are of opinion that the grounds shown by them are far from satisfactory and are not at all sufficient to condone the inordinate delay in filing the original application.

5. We are quite aware of the fact that the applicant No.1 is the hapless widow of Brijlal Yadav and the other applicants are his son and daughters. But we are constrained to say that the claim had already become stale and barred by limitation during the life time of Brijlal Yadav. After his death, the applicants were not vigilant enough to take proper steps for redressal of their grievance. Such being the position, we are of opinion that as the delay in filing the original application has not been satisfactorily explained, M.P. 587 of 89 is liable to be rejected. The original application being hopelessly barred by limitation is also liable to be dismissed summarily. As we are not admitting this application, the question of permitting the applicants to join in one application and proceed with the case jointly does not arise. So, we hold that M.P. 804 of 89 is also liable to be rejected.

6. In view of our findings made above, we dismiss the original application summarily. We also dismiss M.P. 587 of 89 and M.P. 804 of 89.


(P.S.CHAUDHURI)
ADMINISTRATIVE MEMBER
19.1.90


(A.P.BHATTACHARYA)
JUDICIAL MEMBER
19.1.90

(3)
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.


(A. P. BHATTACHARYYA)
JUDICIAL MEMBER