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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OA NOS.678/93; OA ~~No.710/93~~; OA No.687/93; OA No.711/93; OA 729/93; OA 736/93; OA No.746/93;OA 828/93;OA 852/93;OA No.948/93;OA No.1000/93

~~Original Application No.~~

~~Transfer Application No.~~

DATE OF DECISION: 14.2.1994

S.R. Swain & 10 ors. Petitioner

Shri D V Gangal, Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri V S Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M S Deshpande, Vice Chairman

The Hon'ble Shri M R Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? No
2. Whether it needs to be circulated to other Benches of the Tribunal ? No.

Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA NOS.678/93; OA No.710/93; OA No.687/93; OA No.711/93; OA 729/93; OA 736/93; OA No.746/93;OA 828/93;OA 852/93;OA No.948/93;OA No.1000/93

1. Shri S R Swain — Applicant in OA NO. 678/93

2. B D Sahu — Applicant in O.A. No.687/93

3. Shri B N Padhi — Applicant in OA No.710/93

4. Shri T M Dakua — Applicant in O.A. No.711/93

5. M B Gawar — Applicant in OA No. 729/93

6. S B Panigrahi — Applicant in OA NO. 736/93

7. T K Dakua — Applicant in OA No. 746/93

8. M B Bisai — Applicant in O A NO.828/93

9. C B Ghosalkar — Applicant in OA No. 852/93

10. J M Majhi — Applicant in OA No.948/93

11. S D Ghana — Applicant in OA No.1000/93

V/s

Union of India & Ors. — Respondents

Coram: Hon. Shri Justice M S Deshpande, Vice Chairman
Hon. Shri M R Kolhatkar, Member (A)

APPEARANCE:

Mr. D V Gangal
Counsel for applicants

Mr. V S Masurkar
Counsel for respondents

ORAL JUDGMENT: DATED: 14.2.1994

(Per: M S Deshpande, Vice Chairman)

The facts in this and other nine applications are identical and by all these applications the applicants question the orders passed on 5.11.88, 9.2.93 and 17.12.93 and pray that they be reinstated in service with full back wages and continuity of service.

OA No. 396/89 was filed on behalf of the present applicant and 16 others on 25.4.89 for quashing the order of removal which was passed against them on April 5, 1988. The respondents challenged the application on several grounds including that the application had not been signed and verified properly and that the advocate who had verified the pleadings had no authority to do so. When the case was taken up on 28.8.1990 the Original Application was dismissed by a speaking order after considering the merits. MP No. 852/90 was filed for setting aside the order dismissing the application for default in appearance and for restoring the OA to the file. That MP was dismissed on 4.6.91 by observing that since the decision in OA no. 396/89 was on merits the applicants if they wanted to challenge the order may do so by filing a Review Petition. In view of these observations a R.P. No. 852/92 was filed and it came to be decided on 26.8.92 holding that the applicants had no case on merits.

Shri Gangal, counsel for the applicants has stated before us to day that in OA No. 948/93 where identical points arose, an order admitting the application has been passed and that matter be taken on Board and we should decide that application also and in terms of the order that we might pass in the present applications because the controversy which is raised in that case is similar to the controversy being raised in the present applications. Hence we have taken the OA no. 948/93 and proceed to decide the same along with the other applications.

On 14.9.92 the applicants filed an application before the departmental authorities. The applicants

who had been appointed initially on casual basis and had been given regular appointment were served with charge sheets. In respect of applicant in OA NO. 678/93 the charge sheet was served on 8.1.1985 and the inquiry report was made on 17.12.85 and by the order passed on 17.11.1987 three increments were withheld. A show cause notice was issued by the Reviewing Authority on 27.11.1987 to which the applicant S R Swain filed his reply on 8.2.93 and by order dated 5.4.88 he was removed from service. On 14.9.92 Swain and others filed a review petition before the President of India and that application was dismissed on 8.2.93 and it would be desirable to extract the appropriate portion of that order which is as follows:

> "It is intimated that your review petition was submitted to Ministry of Defence, for consideration. Having thoughtful consideration of your representation, it was considered that since the aggrieved individual did not exercise administrative remedies available to him before approaching the CAT, Bombay, it will not be appropriate to consider his petition at this stage and moreso when the contensions of the individuals have been dismissed by the Hon'ble CAT, Bombay in OA No. 396/89 filed by Shri D S Panda & Others."

The learned counsel for the respondents opposed admission on the ground that the applicant's case had been considered on merits and it would be barred by

constructive resjudicata. On the other hand it was urged by Shri D V Gangal, learned counsel for the applicants that since none of the present ten applicants had signed the OA NO. 396/89 and the Advocate Ms. Radha D'Souza had not been authorised to sign and verify the pleadings, the decision rendered was in the absence of the present applicants and cannot bind them. It may be pointed out that these contentions were also raised in OA 396/89. It was the respondents's contention that the pleadings had not been properly signed by all the applicants and the application by various persons jointly could not be maintained. This ground, however, was not expressly considered in OA NO. 396/89 while deciding the case on 28.8.90 nor was it raised in Review Petition which came to be considered later.

The question to be decided is whether the applicants could be said to have been parties to the earlier application because of their not having signed the OA and in the absence of proper verification.

Rule 4 of Central Administrative Tribunal (Procedure) Rules 1987 prescribes that an application to the Tribunal shall be presented in From I by the applicant in person or by an agent or by a duly authorised legal practitioner to the Registrar or any other officer authorised in writing by the Registrar to receive the same or be sent by registered post with acknowledgement due addressed to the Registrar of the Bench concerned. Form No. I of Appendix A shows that the signature of the applicant should appear at the bottom and the verification should also be signed by

the applicant.

In OA NO. 396/89 only one of the applicants D S Panda had signed the application and the verification was also done by him. There was a second verification clause signed by Ms. Radha D'Souza, the Advocate for the applicants who had stated that she had been authorised to file the application on behalf of applicants 1 to 17 and she verified the contents of paras 1 to 14 as being true to the best of her knowledge and that she had not supressed any material facts. It is, therefore, clear that all the other applicants had neither signed the application nor had they verified the OA. The learned counsel for the respondents urged that these lapses were merely procedural on the anology of Order 6, Rule 14 of the Code of Civil Procedure which requires that every pleading shall be signed by the party and his pleader.

On behalf of the applicants reliance was placed on THE PRINCE LINE, LTD. V. THE TRUSTEES OF THE PORT OF BOMBAY, AIR (37) 1950 BOMBY 130 where the learned single judge of the Bombay High Court observed after refering to the provisions of rule 14 and 15 of Order 6 that to allow the plaintiff to remedy the defect at a later stage eventhough the period of limitation may already have expired is a matter within the discretion of the court after due consideration of the facts and circumstances of the case before it. It may be noted in that case the High Court was seized of the case in its original jurisdiction and held that it was open

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to the court to consider whether the irregularities committed in that very suit should be removed or not.

Here we are dealing with the collateral proceedings and unless it is possible for us to hold that the present 10 applicants were not directly parties to the earlier case when it was decided, though on merits, the contention of the respondents cannot be sustained.

Since it is evident that the requirements of signing the pleadings and the verification are not prescribed in the rules of procedure as framed under the Central Administrative Tribunals Act, any departure from the rules or non-compliance thereof would not affect the merits of the case or the jurisdiction of the Tribunal to entertain the application for the relief. The contention of the applicants in OA NO. 396/89 was dismissed on merits, and the court held that this was so also by the order passed in MP no. 852 of 1990 on 4.6.91. The present Review Petition came to be filed on behalf of the original applicants. There is no dispute before us that Mrs. D'Souza had authority of all those persons whose names appear in the table attached to OA No.396/89 to appear for them and that she had the authority also to represent them. The omission to sign the plaint and verification by each of the applicants before us can be regarded merely as a procedural lapse and as an omission which would not affect the merits of the case or the jurisdication of the Tribunal to entertain the OA.

The learned counsel for the applicants urged that Mrs. D'Souza was having only a Vakalatnama and

was not a General Power of Attorney holder. This was not the ground which was raised on behalf of the present applicants earlier and even atleast at the time of filing the Review Petition when they were challenging a decision which went against them.

Shri Gangal for the applicants urged that he is challenging the order passed by the President of India on the application dated 4.9.92 on 8.2.93 which we have extracted above. With regard to the first ground it is apparent that when an application is admitted by the CAT every proceeding of such application pending immediately before such admission shall abate and even otherwise no appeal or representation shall lie. No exception can, therefore, be taken to the observation that the applicants had approached the Tribunal without exhausting the administrative remedies. What the authorities held was that those remedies would be barred once the matter was entertained by the Tribunal without passing appropriate orders saving the departmental proceedings. The second ground given for the order was equally valid because the decision of the Tribunal was on merits and would create a bar of resjudicata. It would not be permissible for the President to entertain the representation on a subject matter on which the Tribunal had given its decision on merits. We cannot therefore, take any exception to the order dated 8.2.1993 which was passed by the President.

In view of the above reasons we find that the present applications are not maintainable and they are

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dismissed. There would be no order as to costs.

M R Kolhatkar

(M R Kolhatkar)
Member(A)

(M.S.Deshpande)
Vice Chairman