

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P. NO. 112/96

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 1160/95

~~Hon'ble Vice Chairman / Member (J) / Member (A)~~

may kindly see the above Judgment for

approval / signature.

V.C. / Member (J) / Member (A) (K/S)

Hon'ble Vice Chairman

~~Hon'ble Member (J)~~

Hon'ble Member (A) (K/S)

I would suggest slight
amendment as shown in
pencil

Signed
2/12

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

WITH M.P. NO.: 838/96 & 889/96

R.P. NO.: 112/96 /IN O.A. NO.: 1460/95.

Dated this Thursday, the 19th day of December, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

N. A. Mujawar & Others ... Applicants

Versus

Union Of India & Others ... Respondents.

Tribunal's order by circulation :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

The applicants have filed this application seeking review of the judgement dated 02.05.1996. The prayers made in the review application are - to review the order of the Tribunal dated 02.05.1996 and set aside the same and to restore the O.A.; pending the hearing and final disposal of this review petition, stay the operation of the order of payment of cost of Rs. 1000/- by the applicant and to direct the respondents to follow the common Command Roster Order dated 11.05.1982 and ignore the hand message dated 30.11.1995.

2. The applicants have also filed a miscellaneous petition no. 838/96 seeking condonation of delay in filing this review application. Though the judgement was delivered on 02.05.1996, the same was received by the applicants on 06.05.1996 and the review application filed on 16.10.1996, therefore, there is a delay of nearly five months in filing this review application.

3. The applicants' counsel, Shri D.V. Gangal, has filed M.P. No. 889/96 seeking expunction of remarks in para 8 of the judgement dated 02.05.1996.

4. On perusal of the review petition as well as M.B., we do not find any prayer made by the applicant or by the applicants' counsel that they should be given a hearing in the review application. We are satisfied that the review petition can be disposed of by circulation under Rule 17(11) of the C.A.T.(Procedure) Rules, 1987.

5. Firstly, we deal with the M.P. No. 838/96 seeking condonation of delay in filing this review petition. The grounds agitated by the applicants are that - in view of the rivalry between the Unions, the applicants were handicapped in approaching the Tribunal or Court in filing the review petition in time. The main grievance of the applicants is that the respondents have ignored the Common Command Roster prepared in the year 1992 and followed the Unit Roster. In view of the instructions issued by the Respondents on 01.04.1995, which has been dealt with in our judgement dated 02.05.1996 and after considering the various contentions of the parties, the O.A. was dismissed. The explanation offered by the applicants in filing the belated review petition is not at all satisfactory and the grounds mentioned in the M.P. are far from satisfactory. Regarding M.P. No. 889/96 filed by the Learned Counsel for the a-pplicants, Rule 17 of the C.A.T. (Procedure) Rules, 1987 reads as follows :-

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"No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

A review application shall ordinarily be heard by the same Bench which has passed the order, unless the Chairman may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

Unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party.

Where an application for review of any judgement or order has been made and disposed of, no further application for review shall be entertained in the same matter.

No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice. The counter affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed."

6. On going through the review petition, we do not find any new factor which could not be agitated during the course of hearing and the same grounds have again been agitated which has been agitated in the O.A. before the Tribunal. It is a well settled principle

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that review application cannot be utilised for rearguing the case on the same ground. The Supreme Court in Chandra Kanta & Another V/s. S. K. Habib [AIR 1975 Vol.62 SC 1500] held that - "once an order has been passed by this Court, a review thereof must be subject to the rules of the same and cannot be lightly entertained. A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistake of consequential import are obviously insufficient.

7. In the light of the above, as stated earlier, the applicants have not brought out any new facts for our consideration and we do not see any error apparent on the face of the record has been pointed out nor any new fact has been brought to our notice calling for a review of the original judgement. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground.

SM

But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

8. Insofar as the M.P. No. 889/96 filed by the applicants' counsel seeking expunction of the remarks made in our judgement dated 02.05.1996 at para 8 is concerned, we have considered the same alongwith the affidavit filed by the Learned Counsel for the applicant. We are of the view that no grounds for review of para 8 have been made ^{out} and we are not inclined to expunge the remarks which are a part of the judgement.

9. In the light of the above, we are of the view, that neither any error apparent on the face of the record has been pointed out nor any new fact has been brought to our notice calling for a review of the original judgement. The review application will also not be sustainable on the ground of delay. The explanation offered by the applicants are far from satisfactory. The grounds raised in the review application are more germane for an appeal against our judgement and not for review. The Review Application alongwith M.P. No. 838/96 and M.P. No. 889/96 is therefore, dismissed by circulation.

M.R. Kolhatkar
 (M.R. KOLHATKAR)
 MEMBER (A).

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B.S. Hegde
 (B.S. HEGDE)
 MEMBER (J).