

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.9 OF 1996 IN O.A. 992 OF 1995

8th, this the Friday day of August 1997

CORAM:

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

HON'BLE SHRI P.P.SRIVASTAVA, MEMBER(A)

Arun S.Tungare & 17 Ors.

.. Review Petitioners

-versus-

Union of India & Ors.

.. Respondents

-: O R D E R :-

(Per B.S.Hegde, Member(J))

The applicants have filed Review Petition No.9/96 in O.A. 992/95 seeking review of the judgment dt. 28-8-95. The respondent department challenged the Labour Court's Award dt. 20-1-95 passed u/s. 10 of the I.D. Act before the Tribunal. The Tribunal after considering the contention of the counsel for the applicant therein and having satisfied that the notice for admission hearing has been acknowledged by the respondents and despite none appeared on behalf of respondents passed the following order :

"The only difficulty which Shri. Masurkar points out to us is about the direction to promote the beneficiary of the order by virtue of clause (2) of order without fulfilling the requirement of clause (ii) of para 1 of the final order. It appears to us that it was not the purpose of the order to grant any discriminatory promotion

②

without subjecting the employees to the prescribed test, namely, the "Dastkari Pariksha" and all we direct is that the entitlement of the beneficiaries of the order as per clause (2) of our order will be subject to their passing the "Dastkari Pariksha" for which they have been eligible. With this modification of the order in the judgment the OA is disposed of."

2. The learned counsel for the review petitioners Shri G.S.Walia contended that the order passed by the Tribunal has come to his knowledge only on 4-12-1995 thereafter they filed this Review Petition on 10-1-1996 because they have not been made a party in the O.A. though they are necessary party to be implemented and have not been served with any notice by the Tribunal. Secondly under Rule 12 of CAT Procedure Rule, 1987 the Tribunal ought to have given one month time for the purpose of filing the reply which was not given. Though the OA has filed on 14-8-1995 the matter came up for admission hearing on 17-8-1995 and the Tribunal issued notice to parties and fixed for hearing on 28-8-95 whereby non compliance of the procedure rule, the order passed by the Tribunal gets vitiated. Further, the mistake committed by the Tribunal is that they directed the review petitioner to appear for Dastkari Pariksha which is blatantly against the rule on the contrary the Award did not envisage any such test to be passed by the petitioners thereby the exparte order passed by the Tribunal is

Reddy

(9)

untenable and the same is not sustainable. In support of the contention learned counsel for the review petitioner cited two decisions; one is of the Tribunal in O.A. 888/94 U.C.I. vs. T.P. Mishra wherein the Tribunal stated that in view of Apex court decision in Krishan Prasad Gupta vs. Controller Printing & Stationary, J.T.1995(7)SC 522 this Tribunal has no jurisdiction to entertain the matters arising out of the Industrial Disputes Act and award/order passed by the Industrial Court/Tribunal. With regard to the ex-parte order he cited a decision of the principal bench in Union of India vs. Karam Chand Gauba(1989)11 ATC 330 where the Principal Bench has held that no limitation period has been prescribed for moving the Tribunal while entertaining the application for review after more than a year if the order passed is ex-parte.

3. In our opinion, both these decisions does not apply to the facts of this case. Firstly disposal of the case by the Tribunal is not ex-parte. Though notice was served they did not care to appear before the Tribunal. Secondly the decision of this Tribunal would not apply to the facts of present case because those decisions were rendered much earlier than K.P. Gupta's case. K.P. Gupta's case does not give any retrospective effect it has got only prospective effect. It is an admitted fact that these review petitioners are part and parcel of the Divisional Secretary of Paschim Railway Karmachari Parishad

Rs

(10)

and they cannot have any separate identity. When there was a dispute registered by the Union the matter was referred u/s.10 of the ID Act by the Govt. of India for consideration and after considering the contention of the parties the Labour Court awarded finally which is binding on all the members of the Union and having accepted the Labour Court's award any individual member of the Union does not have a right to agitate the same by stating that they being the affected party should be heard separately.

4. Learned counsel for the respondents

Mr.V.S.Masurkar stated that it is not their case that they ~~do not~~ belong to the same Union. Being a party before the Labour Court, they do not have any locus-standi to challenge the award of the Labour Court by filing this R.P. only the union is justified in challenging the same. In the instant case, the union has accepted the award of the labour court which has been challenged by the respondent department urging that any further promotion has to be made in accordance with the rules. Accordingly, the Tribunal modified the award to the extent that those who pass the trade test should be given the post. These present review petitioners are those who are seeking promotion without passing the trade test which is not permissible under the recruitment rules. The Union was served with a copy of the OA and inspite of notice they remained absent on 28-8-95 therefore the Tribunal was pleased to dispose of the OA by passing the final order

H/2

(u)

on 28-8-95. The respondents further state that the review petitioners calling ^{themselves} to be the affected parties, whereas the award clearly states that the disputant were represented by Divisional Secretary of Paschim Railway Karmachari Parishad and admittedly cause of the aggrieved members was taken by the Union jointly before Central Labour Commissioner and CGIT. The present review petitioner have not made any individual grievance and therefore the reference was common and the same was defended by the union hence the review petition filed by the present applicants are not maintainable in law. Counsel for the respondents further stated that though the judgment was delivered on 28-8-95 whereas the present review petition is filed on 10-1-96 i.e. after expiry of 4 months. Central Administrative Tribunal Procedure Rules 1987 clearly stipulates that review petition should be filed within a period of 30 days from the date of receipt of copy of the order.

5. Having come to the conclusion that the present review petitioners are not required to be made party respondent, their cause being agitated by the union the question of agitating the Tribunal's order is immaterial. The Union has received the Tribunal's notice but they did not appear before the Tribunal and the Tribunal passed the final order. Therefore, the review petition filed by the present petitioners are barred by limitation. Even on merits — they have not established any grounds for


18/11


(12)

-: 6 :-

entertaining the review petition.

6. In the result, there is no merit in the review petition accordingly the same is dismissed.


(P.P. SRIVASTAVA)
Member (A)


(B.S. HEGDE)
Member (J)

M