

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 942/99

DATE OF ORDER : 26.7.1999

Between :-

B.Ch.Gopala Krishna

... Applicant
And

1. The Comptroller & Auditor General of India, Bahadur Shah Zafar Marg, New Delhi.
2. The Principal Accountant General (Audit), AP, Hyderabad.

... Respondents

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Counsel for the Applicant : Shri PVP Mruthyunjaya Rao

Counsel for the Respondents: Shri B.N.Sarma, Sr.CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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... 2.

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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The first respondent is sought to be directed to dispose of the applicants representation dated 23.12.1998 by passing a speaking order within two months. The said representation dt. 23.12.1998, a copy of which is produced at Annexure-10 to O.A. at page-26 interalia covers the following points :-

(i) the applicant filed a case before this Bench of the Tribunal in which in the counter filed by the Department it was stated that they had sent copy of O.O.35 dated 14.8.80 to all Deputationists whereas in letter No.Au-I/Bills I/87/93-94/D/51 dt.21-1-94 addressed to H.Q. Office that they could not verify whether the Office Order copy was sent to all deputationists or not due to lapse of time. It was also requested in the letter to condone delay in exercising the option and sanction of H.Q. Office and for fixation of pay in ex-cadre post;

(ii) Prl.A.G. in lr.No.Co.Ord cell/CCI/199/ dated February, 1997 instructed the Standing counsel to submit C & AG lr.No.1498/NI/8-92 dt.25-10-93 and Prl. A.G. Lr.No.AG/AudI/Bills/87/93-94/51 dt.21.1.94 before the review Bench. and mis guided the Tribunal;

(iii) the applicant's representation dt.20.4.94 bringing out of all facts, though sent for the comments of A.G (AP) and A.G(Mah) Bombay was never replied and no speaking orders were issued so far. It was therefore necessary, according to the applicants to issue speaking orders why the recommendations of the A.G. were denied and the case became time barred without serving the Office order as instructed by the H.Q. Office.

Further, according to the applicant, as per the Division Bench decision of the High Court of Andhra Pradesh, the lapse of the

P & T Department resulting in non communication had to be considered

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as the lapse of an agent was the lapse of the principal i.e. the principal ^{agent} ~~the~~ sender must owe the responsibility/liability of the lapse of agents. It is not disputed by the learned counsel for the applicant that in OA 861/95 decided on 27.3.1998 the C & AG was directed to issue speaking orders by himself and not by sub-ordinate office, whereupon the C & AG issued speaking orders dt.10.8.1998 and served to the petitioner by AG(ANE) vide lr.No.AG(ANE)/Examinations/98-99 dt.28.8.1998.

2. Therefore, according to the applicant non-furnishing of speaking orders to the applicant in relation to representation dated 20-4-94 was illegal and arbitrary. The applicant further states that ^a Review Petition filed by one of the applicants in OA 868/94 in RA 84/97 dt.11.11.97 was still pending in C.A.T. and therefore according to the applicant speaking orders were required to be furnished to him turning down the request of 21.1.94 whereas Govt. extended benefit even to the people retired in 1973 i.e. 7 years prior to the issue of the orders. On the perusal of the judgement of this Tribunal in OA 868/94, it appears that the grievances expressed by the present applicant in his representation dt.23.12.98 addressed to the C & AG of India, New Delhi have already been considered by the Tribunal in OA 868/94 before giving directions as deemed ^{fit} ~~to~~ by the Tribunal to the Department. ⁱⁿ para-13 of the order passed in the aforesaid OA, it is observed that "as per the statement of the respondents the circular in question was communicated to the deputationists by both the Accountant General of Andhra Pradesh and Maharashtra". It is further observed that the said para that

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circulars of common interest effecting the staff were routienly displayed on the notice board of the office as usual practise. It is further observed in the said judgement that it was impossible to ~~to~~ accept that the applicants could remain in the dark. Taking these reasons into consideration the Bench totally rejected the claim of the applicants. The Bench further observed that the applicants' failure to avail of the opportunity to exercise the option available to them cannot certainly be ascribed to non-communication of the relevamt circular(s). The Bench also did not accept~~ed~~ the submission made on behalf of the applicants that the extention of the benefits through circulars subsequent to the initiation of the scheme issued/in 1980 had the effect of extending the date of exercising the options. The Bench further observed that it was true~~ed~~ that the later circulars pertained to only those officials who had volunteered for deputation to deficit offices after the results of SAS exam, 1980 and in later years were announced. While summing up the case, the Tribunal in para-15 of the judgement of the said O.A. held that the facts revealed in the case before the Bench did not persuade that the applicants are entitled for the reliefs claim^{ed} by them and in fact the applicants did not succeed in establishing any right. The grounds ascribed were far from convincing. The Bench also observed that the time limit of three months set by the authorities was not unreasonable or needlessly restrictive and eventually dis-allowed the claim of the applicants.

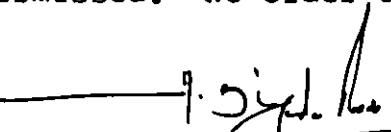
3. The order No.20/97 in OA 868/94 was also rejected by an order dt.6.3.1997. Writ Petition No.14216/97 before the Hon'ble High Court of Andhra Pradesh also held that the

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impugned judgement dt.8.1.97 cannot be adjudicated upon.

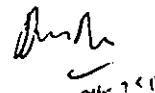
4. More or less, the same contentions are raised by the applicant in his representation dt.23.12.1998 and therefore it is not legal and proper for us to give any fresh direction in respect of any matter which has been considered by the Bench of this Tribunal in OA 868/94 & 989/94- in view of the fact that such practice ^{could be violative of} ~~the~~ principles of ^{the} res judicata. A possibility can also not be ruled out that if a direction is given to the first respondent in this O.A. to dispose of the application dated 23.12.1998, may have the effect of reviving the limitation.

4. In the above view of the matter, the Original Application is dismissed. No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)


(D.H. NASIR)
Vice-Chairman

Dated: 26 July, 1999.
Dictated in Open Court.


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