IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. RP 68/93 (OA 282/92) 199
T.A. No.

DATE OF DECISION 28-11-95.

Hem Raj Petitioner

Mr. S.K. Jain Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Manish Bhandari Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, VICE CHAIRMAN

The Hon'ble Mr. O.P. SHARMA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes.
2. To be referred to the Reporter or not ? yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ? yes.

(O.P. SHARMA)
MEMBER (A)

(GOPAL KRISHNA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Order : 28-11-95.

RP 68/93 (OA 282/92)

Hem Raj

... Petitioner.

Versus

Union of India and others

... Respondents.

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P. SHARMA, MEMBER (A)

For the Petitioner ... Mr. S.K. Jain

For the Respondents ... Mr. Manish Bhandari

ORDER

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Petitioner, Hem Raj, has filed this Review Petition u/s 22(e) of the Administrative Tribunals Act, 1985 (for short, the Act), read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, (for short, the Rules), seeking a review of the order passed in OA 282/92 on 2.7.93.

2. The facts leading to this Review Petition are that the aforesaid OA was listed for hearing on 2.7.93, on which date the counsel for the parties were not present and as such the Tribunal proceeded to decide the OA on merits after examining the records. The contention of the petitioner is that no opportunity of hearing was given to him and the dismissal of the OA, therefore, was a mistake apparent on the face of the record. It is urged that the word "hear" occurring in Rule 15 of the Rules connotes the presence of the opposite party and it means hearing of any of the parties and as such the OA in question could not be decided without hearing the other party when the petitioner or his counsel did not appear when the OA was called for hearing and the decision, therefore, rendered by the Tribunal was wholly illegal and it amounted to illegal exercise of jurisdiction. It is also contended by the counsel for the petitioner that had the petitioner been afforded an opportunity of hearing, he should have brought certain rulings referred to in para 3(iv) of this petition and convinced the court of the proposition that if a person is promoted on ad hoc basis and his promotion is subsequently regularised, the period of ad hoc service rendered by him has to be counted for the purpose of seniority and such period of ad hoc service may be counted for experience also and since the impugned order is contrary to the ratio laid down in the rulings referred to in para 3(iv), (v), (vi) and

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(vii), it is liable to be reviewed.

3. We have heard Shri S.K. Jain, counsel for the petitioner, and Shri Manish Bhandari, counsel for the respondents.

4. Rule 15 of the Rules may be reproduced as follows :-

> **"15. Action on application for applicant's default.**-(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.
>
> (2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:
>
> Provide, however, where the case was disposed of on merits the decision shall not be reopened except by way of review."

Rule 15 provides that if on the date fixed for hearing of the application the applicant does not appear when it is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merits. It also provides that if the application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance on the date fixed for hearing of the application, the Tribunal shall set aside the order dismissing the application and restore the same but if the case was disposed of on merits, the decision shall not be reopened except by way of review.

5. The controversy hinges on the interpretation of the words "hear and decide it on merit", as contained in Rule 15(1) of the Rules. The term "hearing" is very comprehensive. Hearing of the case means the hearing at which the Court/Tribunal may be either recording evidence or hearing arguments or may be considering controversy involved enabling it to adjudicate upon the same. The expression "hear" is also used in the sense of trial. The learned counsel for the petitioner argued that the word "hear"

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connotes the presence of the opposite party and it means hearing of any of the patties. The impugned order was passed on 2.7.93, to which date the case was adjourned and listed for hearing at the request of the learned counsel for the petitioner but on 2.7.93 none was present for the parties. In the circumstances, the Tribunal had to examine the records and proceed to decide the cass on merits instead of dismissing the OA for default. The impugned decision was rendered on the basis of the averments made in the OA and the reply thereto. Since no-one can travel beyond the pleadings of the parties, in the circumstances, there was no alternative but to apply mind to the material on record and decide the matter on merit. The word "hear" refers to hearing of the case by the Court/Tribunal. The Tribunal had considered the entire material on record relating to the determination of the controversy enabling it to come to adjudication upon it. Hearing includes the passing of the judgement. It means coming to the final adjudication of the matter and it may not be very reasonable that a person who has not participated in the proceedings should have his say in the judgement. The Law Lexicon, Compiled and Edited by P.Ramanatha Aiyar, Reprint Edition 1992, at page 511, lays down that, "in legal phraseology "hear" a cause means, to hear and determine it And "unless there be something which by natural intendment, or otherwise, would cut down the meaning there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular Court, mean that it is to be heard and finally disposed of there. And further unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that Court is to follow its ordinary procedure." The words "HEAR THE ARGUMENT" does not mean that the justices shall literally hear the argument, but means that the argument shall be considered by the Court."

6. It is pertinent to reproduce the provisions contained in Section 22(2) of the Act, which read as follows :-

> "22.(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments, as may be advanced ."

It has already been stated earlier that the OA was adjourned to 2.7.93 for hearing at the request of the counsel for the petitioner. However, when it was taken up for hearing on 2.7.93 none was present for the parties. It is not mandated by the provisions contained in Section 22(2) of the Act that the Tribunal shall have to hear oral submissions of the parties or their counsel even in a situation when none of them is present when the case is listed for

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Rd on behalf of
Shri Manish Bhandari
5/12/95

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Bhatnagar

hearing and the Tribunal is precluded in such circumstances from deciding the case on merits after considering the material on record. In the circumstances, we find that no error apparent on the face of the record was committed in deciding the case on merits after a thorough consideration of the entire material on record. We are, therefore, of the view that hearing does not necessarily mean or include only oral arguments. The OA was decided in terms of the provisions contained in Rule 15(i) of the Rules and Section 22(2) of the Act. The other grounds raised in this petition do not justify a review of the impugned order.

7. This Review Petition is, therefore, dismissed.

(O.P. SHARMA)
MEMBER (A)

(GOPAL KRISHNA)
VICE CHAIRMAN

VK