

**CENTRAL ADMINISTATIVE TRIBUNAL,**

**JAIPUR BENCH.**

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R.A.NO.02/2007 IN  
O.A.NO.01/2003

10th MAY, 2007

Sua Lal ...

Applicant

Versus

Union of India & Others

Respondents

O R D E R (By Circulation)

**KULDIP SINGH, VC**

The applicant joined the CSWRI a Government Department w.e.f. 16.2.1965 and retired from service w.e.f. 30.3.2002. The CSWRI was converted into a Society in 1966. the assets and liabilities including employees were taken over by the Society. On conclusion of some disciplinary proceedings against him, applicant was removed from service w.e.f. 1.8.1978. Ultimately he was reinstated. He was asked to give option for absorption in the respondent society in 1990. He gave his consent for absorption vide letter dated 22.12.1994. He was absorbed w.e.f. 4.11.1993. He made a request for absorption w.e.f. 1966, 1976 and 1978. His request was turned down vide letter dated 4/5<sup>th</sup> April, 2002, under intimation to him.

Applicant filed the O.A. before this Tribunal for treating him as employee of CSWRI w.e.f. 1966 and for grant of pay and pension by treating him as CSWRI employee etc. The O.A. was partly allowed by order dated 29.3.2007, inter-alia, observing as under :

"..we are surprised as to why the counsel for the applicant did not ask for production of the letter dated 4<sup>th</sup>/5<sup>th</sup> April, 2002, so that he could have challenged the order passed by the respondent when the reply itself was filed sometime on 12<sup>th</sup> November, 2003. ... we allow the O.A. to the extent only that the applicant has been absorbed in ICAR w.e.f. 4<sup>th</sup> November, 1993 and he is also entitled to all consequential benefits thereafter. The respondents are directed to accord him fixation of pay with all consequential benefits taking him that he was absorbed w.e.f. 4<sup>th</sup> November, 1993 within a period of two months from the date of receipt of copy of this order".

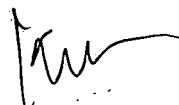
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Now the applicant has filed present R.A on the ground that this Tribunal cannot take judicial notice of order dated 4<sup>th</sup>/5<sup>th</sup> April, 2002, which finds mention in the reply of the respondents and the same does not exists in the eyes of law. Burden lies on the respondents to prove the contents of the said document and the same cannot be shifted on the applicant and it was never conveyed to the applicant. The controversy involved in this case stands settled by Jodhpur Bench of C.A.T in the case of **Dr. A.N. Lahari Vs. ICAR & Others**, as upheld by the Apex Court (Annexures RA-2 and RA-3). If applicant is absorbed from 1993, effect will be that past service will be wiped out and total service will be of only 8 years and 5 months and he will not be qualified for pension.

We find that by citing case of Dr. A.N. Lahari (supra), the applicant has tried to improve his pleadings in the Review Application. He has never cited this case either in his pleadings or at the time of arguments and as such there is no truth in claim of applicant that it escaped notice of the Bench at the time of decision of the O.A. Moreover, the issue in that case was totally different. On merits the case of applicant in that case was also rejected by the Hon'ble Apex Court as he, by his own volition, did not take absorption and claimed absorption subsequently and he had also not challenged the order, adverse to his interests. However, his claim was allowed only on the principle of equal pay for equal work by comparison between absorbed and non absorbed employees.

The plea that court cannot take notice of order dated 4/5<sup>th</sup> April, 2002 also has no substance. The order finds mention in the written statement filed by the respondents. Now the applicant is trying to wriggle out of a situation which is creation of his own. He never challenged that order, even after it came to his notice as mentioned in



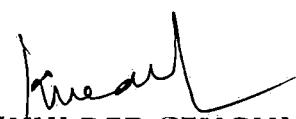
the reply. He chose to file rejoinder but did not seek amendment of the O.A. The Bench has rightly observed that he failed to seek production of the document.

The claim that total service after absorption would be quite less dis-entitling him from pension is a plea, based on apprehension. That is a separate issue. If the respondents pass an order adverse to his interest, applicant can seek remedy as permissible in the law.

In the guise of R.A. the applicant has tried to re-argue the case all over again. The scope of review under order 47, rule 1 CPC is very limited and a review of an order can be sought only when there is apparent mistake on the face of the record such as to remove the clerical error in the judgment or if a party, despite due diligence, has failed to bring some relevant facts to the notice of the Bench. It has not even been pleaded in the R.A. that there is any apparent mistake on the face of the record. The judgment cited by the applicant in the R.A. also does not help the applicant in view of the peculiar facts and circumstances of this case on which specific findings have been recorded. Moreover, that decision was not even brought to the notice of the Bench at the time of disposal of the O.A

In view of the above the R.A. is dismissed in circulation.

  
(J.P.SHUKLA)  
Member (Adm.)

  
(KULDIP SINGH)  
Vice Chairman

HC\*