

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

13.3.2003

Date of Order: _____

RA 04/2003 (OA 418/99)

1. Radhey Shyam, Machine Operator Grade-II O/o Dy.Controller of Stores, W/Rly, Ajmer.
2. Gulam Rasul, Machineman Grade-I O/o Dy.Controller of Stores, W/Rly, Ajmer.
3. Mohan Lal, Ticket Printer Grade-II O/o Dy.Controller of Stores, W/Rly, Ajmer.
4. Girdhari Singh s/o Shri Mool Chand, working in the office of Dy. Controller of Stores, Western Railway.
5. Harprasad, Compositor Grade-I, Railway Printing Press, Ajmer.

... Applicants

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Ajmer.
3. Dy.Controller of Stores, W/Rly, Ajmer.

... Respondents

CORAM:

HON'BLE MR.H.O.GUPTA, ADM.MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

O R D E R

PER HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

Applicants in OA 418/99 have filed this Review Petition against the order dated 17.9.2002, passed in the said OA, alongwith MA 124/2003 for condonation of delay in filing the Review Petition. The ground taken for condonation of delay in filing the Review Petition is that after dismissal of the OA it came to their notice that some documents relating to their employment as casual labour and their seniority list were sent to the Union Office by respondent No.3 i.e. Deputy Controller of Stores, Western Railway, Ajmer, and the applicants could get copies of these orders/documents only in the second week of February and immediately after getting the copies of the orders/documents they moved an application for getting the certified copy of the order passed in the OA (No.418/99) to file the Review Petition. Without going into the genuineness of the averments made by the applicants in MA 124/2003, we consider it appropriate, in the interest of justice, to condone the delay in filing the Review Petition and accordingly MA 124/2003 is allowed.

2. Now we proceed to decide the Review Petition on merits. The applicants, who were initially appointed as casual labour in the year

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1971, had filed OA 418.99 before this Tribunal seeking direction that an appropriate order or direction may be passed to provide temporary status to them from the date when they completed 120 days continuous service, with all consequential benefits.

3. The respondents contested the OA by filing reply. The claim of the applicant has been resisted by the respondents on the ground of maintainability of the application being time barred and also on merit that the applicants had not completed 120 days of continuous service for being entitled to grant temporary status from the year 1974/1975. It was further averred in the reply affidavit that the claim of the applicants pertains to the year pre 1974 and the relevant record has been weeded out being more than 25 years old. Thus, in the absence of official record, the claim put up by the applicants cannot be verified whether they had rendered 120 days of continuous service, which is a pre condition for grant of temporary status. This Tribunal, vide order dated 17.5.2000, granted one week's further time to the respondents to file reply affidavit and two weeks' time was granted to the applicants to file rejoinder, if any. The matter was listed before the Tribunal on number of occasions and lastly, on 12.9.2002, on which date the learned counsel for the applicants submitted that he does not want to file rejoinder and matter may be heard. The matter was heard on the same date and the order was reserved.

4. The present Review Petition has been filed by the applicants only on the ground that during the pendency of the OA the applicants tried their best to get the copy of the order which establishes that they performed service for more than 120/240 days. But even after doing their best efforts, they were not able to get the copy of the order establishing their claim that they had completed the service of required number of days. After the dismissal of the case, it came to the notice of the applicants that copy of the order establishing the fact that they had performed particular number of days in service had been sent to the Union Office. The applicants tried to get the copy of the order from the Union Office in the second week of February. Alongwith the Review Petition, the applicants have annexed copy of the seniority list dated 12.6.73 and the seniority list issued on 30.5.76, showing seniority position of casual labours as on 31.12.75. Based on these two documents, the applicants submit that the present Review Petition may be allowed and the matter may be heard on merits again.

5. We have considered the submissions made by the applicants in the Review Petition and we are not inclined to accept the prayer of the



applicants to review the order dated 17.9.2002, passed in OA 418/99, for the reasons given hereinafter.

6. It cannot be disputed as principle of law that review cannot be claimed or asked for merely for a fresh hearing or argument or correction of an erroneous view taken earlier. Power of review available to the Tribunal is same as has been given to courts u/s 14 read with Order-47 of CPC. The power is not absolute and is subject to restrictions indicated in Order-47 of CPC. Power of review can be exercised only on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person concerned or could not be produced by him at the time when the order was made. Power of review can also be exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason.

7. Viewing the matter on the basis of aforesaid settled position, the applicants have not made out any case for reviewing the order dated 17.9.2002, passed in OA 418/99. As already noticed above, the applicants were given time to file rejoinder within two weeks after filing reply by the respondents, vide order dated 17.5.2000. Reply in the OA was filed by the respondents on 21.6.2000. Thereafter, the matter was adjourned from time to time and lastly the matter was taken up for hearing on 12.9.2002, on which date the learned counsel for the applicants made a categorical statement that he does not want to file rejoinder and the matter may be heard finally. It was on the basis of this categorical statement made by the learned counsel for the applicants that parties were heard and order reserved. From these facts, it is evident that applicants were made aware about the stand taken by the respondents in the reply and the applicants for more than two years did not chose to controvert the specific stand taken by the respondents on merit viz. the applicants had failed to establish their case that they had completed 120 days of continuous service for being entitled to grant temporary status from the year 1974/1975. Further, the applicants were also put to notice that the OA is barred by limitation u/s 21(2) of the Administrative Tribunals Act, 1985 and a subsequent representation will not have the effect of extending limitation and the OA is not maintainable and barred by limitation. The stand taken by the respondents in their reply has been reproduced in para-4 & 5 of the order dated 17.9.2002, passed by this Tribunal in OA 418/99. Thus, the plea taken by the applicants in the present Review Petition that some documents relating to their employment as casual labour and their seniority lists were sent to the Union Office by respondent No.3 came to their notice after dismissal of

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the OA cannot be accepted. The applicants had sufficient time to procure those documents which have now been annexed with the RA before the matter was finally argued on 12.9.2002 and having failed to avail the opportunity for a considerable period of two years, it cannot be said that the applicants have acted with due diligence and the documents now annexed with the Review Petition, which are only seniority lists, were not within their knowledge. Thus, the applicants have failed to make out a case for reviewing the order dated 17.9.2002, passed in OA 418/99. That apart, while deciding the said OA, this Tribunal after reproducing the reply given by the respondents in para-4 & 5 of the order and after noticing the contentions raised by the learned counsel for the respondents on the maintainability of the OA and relying upon the judgement of the Apex Court in the case of Ramesh Chand Sharma v. Udhamp Singh Kamal & Ors., 2000 SCC (L&S) 53, that in the absence of any application u/s 21(3) of the Administrative Tribunals Act, 1985, praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the OA on merits and that the Tribunal has totally overlooked Section-21 of the Act, in para-10 of the order it was held as under :

"10. In the instant case also, the applicants have not filed any application for condonation of delay and admittedly the cause of action is also time barred."

After recording these findings, the Tribunal also proceeded to decide the matter on merits, relying on the judgement of Apex Court in the case of The Range Forest Officer & Anr. v. S.T. Hadimani, 2002 (2) SLJ 316, and held that the applicants have failed to establish that they have worked continuously for 120 days in a year/period so as to enable them the grant of temporary status at par with other employees who were granted such status vide order dated 18.8.89 w.e.f. 12.7.74 and 8.10.76. Even if it is assumed that the applicants have made out a case for grant of temporary status w.e.f. 1974/1976 on the basis of the seniority lists (Ann.R/1 & R/2 in the Review Petition), though not determined, the present Review Petition is required to be dismissed on the ground of limitation in view of the law laid down by the Apex Court, as reproduced above. Thus, no useful purpose will be served even if it is assumed that, though not determined, the applicants have made out a case on merits.

8. For the foregoing reasons, the present Review Petition is dismissed. By circulation.

(M.L.CHAUHAN)
MEMBER (J)

(H.O.GUPTA)
MEMBER (A)