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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 90/2003

This the 8th day of August, 2003

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Re: OA No. 90/2003

1. Mrs. Raj Gupta,
W/o Late Sh. R.C. Gupta,
R/o 1256, Gulabi Bagh,
Delhi-110007;

2. Nitin Gupta
S/o Late Sh. R.C. Gupta,
R/o 1256, Gulabi Bagh,
Delhi-110007.

3. Sachin Gupta
S/o Late Sh. R.C. Gupta,
R/o 1256, Gulabi Bagh,
Delhi-110007.

For their father namely,
Late Sh. R.C. Gupta,
S/o Late Sh. Kishori Lal,
R/o 1256, Gulabi Bagh,
Delhi-110007.

(Applicant No.2 in person)

Versus

1. The Chief Secretary,
(For Lt. Governor of Delhi)
Government of National Capital
Territory of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi-110002.

2. Director of Vigilance,
Government of National Capital
Territory of Delhi,
Old Secretariat,
Delhi-110054.

3. Commissioner, Sales Tax,
Sales Tax Department,
Bikrikar Bhawan,
I.P. Estate,
New Delhi-110002.

(By Advocate: Sh. Ajesh Luthra)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant have filed this OA seeking relief to set aside
the order dated 23.11.2001 passed by the Appellate Authority,
i.e., Lt. Governor, Delhi in an appeal filed under Rule 23 &

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24 of the CCS (CCA) Rules, 1965 against the dismissal order dated 13.12.2000. They had also prayed for quashing of the disciplinary proceedings initiated illegally vide charge memo dated 15.3.99, 20.4.99, 18.6.99 and 1.7.99.

2. Facts in brief are that the present applicants in the OA are legal heirs of late Sh. R.C.Gupta, who was a Govt. employee. Late Sh. R.C.Gupta was working as Assistant Sales Tax Officer when he was put under suspension vide order dated 21.8.96 contemplating departmental proceedings. Thereafter in all, 4 chargesheets were issued to the applicant to late Sh. R.C.Gupta pertaining to different firms and assessment conducted by late Sh. R.C.Gupta. Sh. Gupta was awarded a penalty by the disciplinary authority imposing penalty of dismissal from service which was challenged by late Sh. Gupta by filing an OA.

3. The OA was registered as 2599/2001 which was decided vide order dated 16.7.2002. While the OA was pending the appeal preferred by the deceased employee was also decided by the appellate authority, i.e. Lt. Governor of Delhi and copy of the order of appellate authority has also been served on the deceased employee. However, this case has been filed by LRs of deceased Govt. employee challenging the order of appellate authority.

4. When this case came up for hearing for the first time it was pointed out about the fact of filing of earlier OA by the Govt. employee himself while he was alive, so that file was also linked alongwith this. Since another Coordinate Bench was of the view that what actually the applicants are seeking in this case is review of the order passed by the bench deciding the OA-2599/2001 so this case was listed before us.

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5. Now the question arises whether this case could be treated as a RA of OA-2599/2001. The order passed by the appellate authority was passed while the OA was pending and which had already been served upon the deceased employee. We have considered this aspect and we have come to the conclusion that the review application does not lie because the review had become time-barred as the earlier OA was decided on 16.7.2002 and the present application has been filed on 6.1.2003, so the review is time barred. Though the application for condonation of delay has also been filed but we do not find any ground to condone the delay because while the earlier OA was pending during that period itself the appellate authority had decided the appeal, so it was open to the applicant to make an amendment to the OA and could have challenged the order passed by the appellate authority or applicant may have withdrawn the earlier OA and could challenge the order of disciplinary authority as well as appellate authority by filing fresh OA. But that course has not been adopted by the applicant.

6. To our mind it was only course available to the applicant and the procedure adopted by the applicants how to challenge the order passed by the appellate authority separately cannot be taken into consideration because it will amount to unending process of litigation. The order passed by the appellate authority should have been challenged in the earlier OA itself. Even if we treat it as a review then also, to our mind, even the review on merits does not lie because it is not a case that applicants have discovered some new facts after the decision of the OA. Appellate authority has decided the case when the OA was pending. So no case for review is made.

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7. Be that it may still the question would remain open whether this OA can be decided as a fresh OA. On this issue also we are of the confirmed opinion that fresh OA does not lie because the same has become time barred. Applicants wants to challenge order passed by the appellate authority and there is no ground for condonation of delay. Besides that the matter is also barred by principles of res judicata as the issue with regard to the dismissal of the applicant had already been factually adjudicated upon when earlier OA was decided. Though the appellate authority's order was not before the Court at the time of decision of the earlier OA yet we find that order passed by the appellate authority has been served upon the deceased employee. So by applying the principles of constructive res judicata, the applicant could have taken the plea to challenge the order passed by the appellate authority itself in that very OA. Since the same has not been done, the OA is barred by principle of res judicata.

8. Hence, examining the case from both the angles either as a review or as a fresh OA, we find that there is no merit in this case and petition registered as OA No.90/2003 is dismissed.


(KULDIP SINGH)

Member (J)


(V.K. MAJOTRA)

Member (A)

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