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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 28.11.2019

+ W.P.(C) 9581/2019

DR. A.K. DOSHI

..... Petitioner

Through: Ms. Anju Jain, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Gigi C. George, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

1. The petitioner impugns order dated 05.08.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in M.A. No.3788/2018 in O.A. No.100/286/2015, whereby the Tribunal was pleased to dismiss M.A. No.3788/2018 seeking restoration of the O.A., which O.A. had been dismissed in default by the Tribunal for non-appearance of the petitioner.

2. We may state at the outset, that considering the *ex-facie* merits of the matter and since there was no opposition in this regard, vide order dated 03.09.2019 we had restored O.A. No.286/2015 to its

original number and position and had posted the O.A. for consideration on merits by the Tribunal. However, since the petitioner has disclosed a peculiar state of affairs, which we believe is not unique to the present case but has also been reported in other cases before the Tribunal, we considered it appropriate to request the presence of the Registrar of the Tribunal, to explain the issues that were presented by way of this petition.

3. The genesis of the matter is a claim for pension as per FR 49(III) which was rejected by the respondents; which grievance was taken by the petitioner before the Tribunal by way of an O.A. The O.A. was filed on 22.12.2014 and pleadings in the matter were complete by 26.09.2016, whereupon the matter was posted to 25.10.2016. Between 25.10.2016 and 05.07.2018 the matter was duly attended to by petitioner's counsel and/or associate counsel, whereupon by order dated 05.07.2018 the matter was posted to 16.08.2018. Order dated 05.07.2018 reads as under:-

*"None for the applicant.
List on 16.08.2018."*

4. However, it transpired that in spite of the matter having been posted to 16.08.2018, the matter came to be listed before the Tribunal on 31.07.2018, on which date the O.A. was dismissed in default and for non-prosecution since no one appeared on behalf of the petitioner/applicant on that date. Since the next date given in the matter earlier-on was 16.08.2018, on that date the petitioner/petitioner's counsel made enquiries and learned that the matter already stood dismissed in default on 31.07.2018.

Consequently on 27.08.2018 the petitioner filed an M.A. seeking restoration of the O.A. by recalling dismissal order dated 31.07.2018. This M.A. came to be listed before the Tribunal on 10.09.2018; and notice was issued to the respondents, who were given time to file reply and the petitioner was given time to file rejoinder on certain subsequent dates. It would bear mentioning that since the O.A. was dismissed in default of appearance by the petitioner and not on merits, the respondents had acquired no vested right that they would need to defend; nor would the respondents have had anything to say regarding the unilateral change of the date of hearing, which was evidently done without individual notice to either of the parties. In these circumstances, there was in fact no necessity to call for a reply in the restoration application from the respondent. Be that as it may, on 29.03.2019 the petitioner filed rejoinder in the M.A.; and the matter got posted to 16.04.2019.

5. However, the matter was not listed on 16.04.2019; and the petitioner was informed that the same would instead be listed on 22.04.2019. From 22.04.2019 the matter got posted to 26.04.2019 and thereafter to 23.05.2019. However, yet again, the matter was not listed before the Tribunal on 23.05.2019 but was listed on 24.05.2019, on which date it got adjourned to 05.08.2019.

6. On 05.08.2019 the impugned order came to be passed, whereby the Tribunal dismissed the restoration application, observing as under:-

**“CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORDER SHEET**

No. of Adjournment: 9

COURT NO.: 3

05.08.2019

M.A./100/3788/2018

O.A./100/286/2015

DR. A.K. DOSHI

-V/S-

M/O CORPORATE AFFAIRS

ITEM NO.:4

*FOR APPLICANTS(S) Adv.: Ms. Riya Dhingra for Mr.
Hitesh Sachar*

FOR RESPONDENTS(S) Adv.: Mr. Ashok Kumar

<i>Notes of the Registry</i>	<i>Order of The Tribunal</i>
	<i>Counsel for the applicant does not appear even on the revised call. Hence, restoration application is dismissed in default.</i> <i>(NITA CHOWDHURY)</i> <i>MEMBER (A)</i>

7. Learned counsel appearing for the petitioner contends that on 05.08.2019 he reached the Tribunal by 11.30 A.M., by which time the M.A. had already been dismissed, with the Tribunal observing that counsel for the applicant had not appeared even on revised call. Counsel points-out however, that as can be seen from the order passed, an associate/assisting counsel was actually present at the time the matter was taken-up; and it is submitted that the associate/assisting counsel did not decline to make submissions in the matter. The Tribunal was however seeking the presence of the main counsel for the petitioner.

8. A conspectus of the dates shows that despite specific judicial orders listing the matter on particular dates, the matter came to be listed on a different date on at least four occasions, as summarized in the chart below:-

<i>APPLICATION NO.</i>	<i>ORDER DATED</i>	<i>MATTER TO BE POSTED ON</i>	<i>MATTER GOT LISTED ON</i>
<i>O.A. No.286/2015</i>	<i>05.07.2018</i>	<i>16.08.2018</i>	<i>31.07.2018</i>
<i>M.A. No.3788/2018 in O.A. No.286/2018</i>	<i>02.01.2019</i>	<i>07.02.2019</i>	<i>08.02.2019</i>
<i>M.A. No.3788/2018 in O.A. No.286/2018</i>	<i>29.03.2019</i>	<i>16.04.2019</i>	<i>22.04.2019</i>
<i>M.A. No.3788/2018 in O.A. No.286/2018</i>	<i>26.04.2019</i>	<i>23.05.2019</i>	<i>24.05.2019</i>

9. It is in this backdrop that the petitioner approached this court in its extraordinary jurisdiction under Article 226 of the Constitution seeking remedy against this peculiar situation.

10. Learned Registrar of the Tribunal has appeared before us today i.e 28.11.2019; and has rendered his explanation for the repeated change of dates of listing of the matter, without individual intimation to counsel or the parties concerned. The explanation offered is that in order to expedite disposal of old matters/matters relating to senior

citizens, the Tribunal had, by administrative directions, instructed the Registry that old matters/matters relating to senior citizens be listed out-of-turn at the top of the cause list on various dates, with the intention of giving precedence to such matters. The Registrar has explained that by reason of such administrative directions, other matters had to be re-scheduled to other dates, which is why matters, such as the present one, came to be listed on a date different from the date indicated in the last judicial order. The Registrar further explains that the changed dates of hearing were posted on the notice board of the Tribunal for the information of all concerned.

11. We may note that while such oral explanation has been rendered, the administrative directions in question have not been produced before us; and we have therefore not had the occasion to peruse such directions. Be that as it may, accepting what we have been advised by the Registrar, we are compelled to observe that though the purpose of issuing administrative directions to expedite certain categories of matters may be laudable, such directions have clearly been implemented in a thoughtless manner.

12. For one, we do not immediately see as to how listing old matters/senior citizens' matters out-of-turn at the top of the cause list on a given date, would push other matters posted for that date to an 'earlier date' than the date fixed. We also fail to understand as to how the date given by a judicial order passed by the Tribunal can simply be changed, and that too advanced to an earlier date, by administrative directions.

13. We can only emphasize that there is some sanctity attached to a date of hearing indicated in a judicial order, which deserves to be respected. While it is certainly available to the Tribunal to change a date, if necessary, but such change of date can only be by way of a judicial order and not by general administrative directions. Besides, the mere posting of changed dates of hearing by way of general notice on the notice board of the Tribunal or in some other similar manner, is absolutely no answer. The Tribunal, with its vast and rich experience, would be well aware that even where a change of date is requested by one party, the date is never changed in the absence or behind the back of the opposing party. It would be unthinkable to expect counsel/litigants to keep following-up on possible change of dates in their matters on an on-going basis, so as not to default in appearing in their matters.

14. This, regrettably, is exactly what has happened in the present case. What is even more harsh, is that the application moved by the petitioner seeking restoration of his O.A. was itself dismissed in default in the presence of an associate/assisting counsel, who it would appear, did not decline to make submissions in the matter. The ground for dismissal of the restoration application apparently was the non-availability of the main counsel for the petitioner in the early hours of the Tribunal's sitting on that date. In any case, we are unable to gather as to what was there to argue about, when the change of date was evidently made by unilateral administrative directions. By doing so, the Tribunal has clearly acted in an unduly harsh manner; and that is

why *vide* order dated 03.09.2019 we restored the O.A. to its original number and position before the Tribunal for consideration on merits.

15. Upon a consideration of the foregoing and to obviate repetition of such situation, we issue the following directions to the Tribunal in relation to change of dates in matters listed before it:-

- (i) Ordinarily a date given by judicial order in any matter must not be changed and the matter must be posted to the date so fixed;
- (ii) If a change of date becomes necessary, either upon the request of one of the parties or by reason of any other contingency or unforeseen circumstance, a date may be changed only after posting the matter on the date already fixed; and only by judicial order, in the presence of counsel and/or parties on both sides;
- (iii) In the event a given date happens to be a holiday, whether listed in the Tribunal's calendar or otherwise, all matters posted to such date must be posted to the Tribunal's next working day "for directions"; and posted to a subsequent date only thereafter;
- (iv) In no case shall any date of hearing given by judicial order be changed, whether advanced or postponed, by administrative order or direction; and the posting of a general or specific notice for change of date/s on the notice board or website of the Tribunal shall not amount to sufficient notice to counsel and/or parties for change of date/s.

16. In the above circumstances, we would request the Tribunal to bear in mind the observations made in this order for their future reference. We direct the Registrar of the Tribunal to circulate a copy of this order to the Chairperson and to all Members of Tribunal as also to all officers of the Registry concerned with listing, at the earliest.

17. The writ petition and all pending applications, if any, are disposed of in the above terms.

ANUP JAIRAM BHAMBHANI, J.

G.S.SISTANI, J.

NOVEMBER 28, 2019

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