

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No. 173/2005 In
O.A. No. 605/2002**

New Delhi, this the 5th day of March, 2007

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE MRS. NEENA RANJAN, MEMBER (A)**

Shri L.R. Saxena
S/o Shri U.R. Saxena
R/o A-308 Vikas Puri,
New Delhi-110 018 (Group-C) Review Applicant.
(By Advocate : Shri R. Venkatramani, Sr. Counsel and
Shri S.M. Garg)

Versus

1. Union of India
through the Secretary,
Ministry of Agriculture,
(Department of Animal Husbandry and
Dairying),
New Delhi-110 001.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008.

...Respondents

(By Advocate: Shri S.M. Arif)

ORDER

HON'BLE MRS. NEENA RANJAN, MEMBER (A) :

By filing this Review Application, the applicant seeks to review of order dated 14.7.2005 passed by the Tribunal in OA No. 605/2002.

2. In the RA, the applicant has raised the following grounds:-
- (i) that while working as Dairy Supervisor in Delhi Milk Scheme, applicant was issued a charge-sheet on 20.1.2000 alleging attempted sexual assault and outrage of modesty of a female Dairy Mater employee, on 31.12.1999, when she was alone in office of Central Dairy. Three witnesses were produced by the

21

prosecution to bring home the charge against the petitioner, i.e., Shri Ashok Bansal, Central Dairy Manager, Shri G.P. Sharma, Dairy Supervisor and the complainant Smt. Samridi Devi herself. Shri Ashok Bansal is not a witness to the alleged sexual assault. He only stated that he was shown marks on her breasts by the complainant on 31.12.1999 when he returned from a workers' party;

(ii) that Shri G.P. Sharma's evidence, who claims to be the only eye witness is concerned, it is the evidence of an interested witness, who was having serious differences with the applicant. This fact has been proved during the disciplinary proceedings and accepted by the Inquiry Officer;

(iii) that it was proved during the disciplinary proceedings that the applicant had sought to shift the duty of the complainant from the office to the clearing section on orders of Shri Ashok Bansal. This was resented by her and is the motive behind the complaint;

(iv) that on 5.1.2000 the complainant sought to withdraw her earlier complaint, by personally handing over a letter to Shri Ashok Bansal, which was signed by her in the presence of Shri Bansal, on the grounds that the complaint was given due to some misunderstanding. Shri Bansal forwarded it to DGM (A) for necessary action. Shri Bansal has also deposed that he did not put any pressure upon the complainant for signing said letter of 5.1.2000 in his presence;

(v) that on 10.1.2000 the complainant again submitted a letter dated 5.1.2000, which was on similar face type as complaint dated 3.1.2000 wherein she now stated that she was coerced by Shri R.C. Bhatia to give letter dated 5.1.2000 withdrawing complaint.

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From such behaviour it can be deduced that it was an after thought and complainant made allegations against applicant at someone else's behest;

(vi) that the role of Shri Sharma in this case has been highly suspicious as it has also been commented upon by the Inquiry Officer in the disciplinary proceedings against Shri R.C. Bhatia;

(vii) that the allegation against the applicant falls within the four corners of IPC, however, no investigation by an independent agency was referred to in spite of the repeated request by the applicant for investigation by the Police;

(viii) that vide letter dated 5.1.2000, the complainant sought to withdraw her complaint dated 3.1.2000 and it is proved that the said letter was given by her on her own volition, without any pressure from any side, which would also prove that subsequent letter dated 5.1.2000 given on 10.1.2000 was an afterthought and cannot be relied upon. Thus no case survived against the applicant after 5.1.2000 and the initiation of departmental proceedings against applicant itself was illegal;

(ix) that the onus of proving the charge against applicant was upon the prosecution. However, the Inquiry Officer, shifted the burden from the prosecution to the applicant by stating as follows:-

“ Even otherwise the charged official has not produced any concrete evidence, which could prove that he did not molest Smt. Samridhi Devi on that date and he is innocent. Simple denial is not sufficient and he was required to give concrete evidence in his support”.

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(x) that there is an apparent patent mistake, in order dated 14.7.2005 when I.O. himself does not render a finding to the effect

that 'the guilt of the applicant is proved'. The Tribunal has erred in holding that the complainant's written complaint and her reporting to the Manager immediately after the incident is enough to prove the guilt of the applicant;

(xi) that the disciplinary authority imposed the punishment of dismissal which was converted into compulsory retirement. A careful reading of the defence statement would prove that there was no admission on the part of the applicant with regard to sexual assault by him upon the complainant;

(xii) that it was brought to the notice of the Tribunal at the time of hearing of the OA that CWP NO. 2269/2001 filed in the name of the complainant before the High Court is not free from doubt since apparently said petition has been signed by her. The matter has already been raised before the Hon'ble High Court and the High Court has already obtained the original signature of the complainant on 23.7.2003. However, the matter of investigation whether the said petition has been filed by the complainant or not was postponed till the finalisation of the OA.

(xiii) that the Tribunal has heavily relied upon the fact that the petition filed in the name of the complainant had rendered a finding that "the action on the part of the lady employee speaks volumes about the genuineness of the complaints made by her".

(xiv) that the Inquiry Officer was unable to reach a definite conclusion of guilt against applicant and in spite of taking into consideration conjectures and surmises, could only say that the possibility of the charge by the applicant cannot be ruled out.

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3. Hence it is prayed that the RA be allowed and the order dated 14.7.2005 be recalled.

24

4. In the counter the respondents have pleaded as follows:-

(i) that it is a well settled principle of law that the jurisdiction of the Tribunal in judicial review of orders of disciplinary and appellate authority in departmental inquiry is limited. If the Tribunal finds no fault with the proceedings conducted by the disciplinary authority, it has no jurisdiction to re-appreciate the evidence and to interfere with the order of punishment. This Tribunal in its order dated 14.7.2005 has held that the applicant has not pointed out any lacunae in the conduct of the enquiry or disciplinary proceedings;

(ii) that the Hon'ble High Court vide order dated 7.11.2005 passed in CWP No. 2269/2001 had quashed the order dated 28.2.2001 issued by the Appellate Authority in the matter and ordered the Appellate Authority to re-examine the matter afresh and pass a speaking order on the appeal within 4 weeks. Thereafter, considering the matter in detail, the Appellate Authority passed the following order:-

" After going through the accused Government Official's annual confidential reports and find that he has been adjudged as an honest, intelligent and hardworking officer, during his service period of more than 30 years and his integrity has been shown beyond doubt. In this context, my view is that the compulsory retirement is also a major penalty and the guilty is forced to retire from Government service. The accused Government Official would have retired on superannuation on 3.10.2005 in the normal course. Compulsory retirement on 24.7.2000 deprived him of over 5 years of service and caused substantial financial loss in salary, pension and other retirement benefits.

Keeping in view all the relevant factors, records of the case and also the fact that it will perhaps be unfair to wipe out his service of three decades rendered in DMS and, therefore, I am convinced that ends of justice will be met

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if the major penalty of compulsory retirement from Government service is imposed on him so as to deter repetition of such misconduct, in proven cases, and also assure female employees of a safe working place.

Now, therefore, after carefully re-examining/considering the whole case in pursuance of aforesaid High Court's directions and in exercise of the powers conferred on me under Rule 27 of CCS (CCA) Rules, 1965, I impose the penalty of compulsory retirement on Shri L.R. Saxena, Ex-Dairy Supervisor".

(iii) that applicant tried to outrage the modesty of Smt. Samridhi Devi on 31.12.1999 at about 2.00 P.M. when she was alone in the office of Central Dairy. Upon hearing the cries of Smt. Samridhi Devi, Shri G.P. Sharma reached there and at about 3.00 P.M. the matter was reported to Shri Ashok Bansal, Manager, Central Dairy. The Inquiry Officer considered this submission of the applicant, however rejected the same in his report;

(iv) that Smt. Samridhi Devi has submitted two applications on 5.1.2000. In one of the signed applications she withdrew the application but in the subsequent application she stated that her earlier application may not be considered as the same was given under protest/duress; as such it is prayed that the RA be dismissed.

5. We have heard the learned counsel for the parties and carefully perused the records, the RA and the order passed by this Tribunal in above-mentioned O.A.

6. It is a well settled law that the scope of a Review Petition is very limited and the Tribunal will entertain Review Application only if there is any mistake or error apparent on the face of record or there is discovery of a fresh and important material evidence that was unavailable to the party

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earlier, which can now be rectified without undue long process of arguments etc.

7. In the instant case, we do not find any such mistake or error apparent on the face of the record nor is there any new and important material/evidence that has been produced in this review application for our consideration.

8. By filing the present Review Application, the petitioner only wants to re-agitate the matter afresh, which is not permissible under law. If the applicant is not satisfied with the order passed by the Tribunal supra, remedy lies elsewhere. The Apex Court in Union of India Vs. Tarit Ranjan Das, 2004 SCC (L&S) 160 has observed as under:-

"13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court".

9. Having regard to the above, RA is dismissed. No costs.

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(NEENA RANJAN)
MEMBER (A)

S. Raju
(SHANKER RAJU)
MEMBER (J)

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