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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

RA No. 294/2002
in
OA 2770/1999

New Delhi, this the 3rd day of October, 2003

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

N.K.BATRAApplicant
(By Shri B.S. Mainee, Advocate)

VERSUS

UNION OF INDIA & ORS.Respondents
(By Shri V.S.R. Krishna Advocate)

ORDER

Order delivered by Mr. Shanker Raju, Member (J)

By order dated 5.9.2002 in OA 2770/1999 where the applicant had impugned his dismissal and the appellate orders upholding the punishment issued the following directions:-

"Having regard to the Railway Board's instructions supra and the decision of the Apex Court in Mahavir Prasad's case supra, we partly allow this OA. Impugned order dated 23.05.2002 is quashed and set-aside. As the applicant has now, during the pendency of the OA has been served upon the copy of the reasons recorded by the disciplinary authority, he is at liberty, if so advised, to prefer an appeal to the appellate authority against the punishment of dismissal within four weeks from the date of receipt of a copy of this order. The appellate authority shall act in accordance with the Railway Board's instructions and pass a detailed and speaking order within one month thereof. If the applicant is still aggrieved, it shall be open for him to approach, to redress his grievance, this Tribunal in accordance with law. No costs."

2. Applicant preferred a Misc. Application under Rule 24 of the C.A.T. (Procedure) Rules, 1987 for suitable clarification. The aforesaid M.A. was converted into a Review Application by an order dated 2.12.2002.

3. Learned counsel for review applicant Shri B.S. Mainee contends that once the Tribunal in para 15 of the order has come to the conclusion that as the reasons in support of dismissal have not been communicated, the applicant had been greatly prejudiced in the matter of defence and prevented him from making an effective appeal. As the applicant was deprived of a reasonable opportunity of defence, the action of the respondents was not found in conformity with the principles of natural justice and not legally sustainable.

4. Having regard to the above, it is stated that being a quasi judicial authoirity, it was incumbent upon the respondents to pass a reasoned order and that to be communicated. The delay in communicating the reasons had been recorded after two years on file and brought on record during the pendency of OA, hence the action is not sustainable in law in view of a decision of Apex Court in S.N.Mukherjee vs. Union of India, 1990(4) SCC 594.

5. Having regard to the above, it is stated that there exists an error apparant on the face of record, in so far as after declaring the order of dismissal as non-sustainable on the basis of reasons recorded by the disciplinary authority and communicated to the applicant during the pendency of the OA without quashing the dismissal and re-instatating back the applicant, directions have been issued to the appellate authority to pass a detailed and speaking order with liberty to assail in accordance with law.

6. In so far as appellate order dated 2.1.1003 passed by the respondents is concerned, learned counsel for the applicant Sh. Maine states that the applicant preferred an appeal to the respondents which was sent on 4.11.2002 and the same has been made subject to decision of the MA/RA. The applicant vide his appeal also requested the authorities to keep the decision in appeal in abeyance.

7. Shri Maine states that in the interest of justice, when there is an error apparent on the face of record, it is incumbent upon the Tribunal to correct it to keep the majesty of law. Once the dismissal order is declared illegal, the appellate order is also to be set aside and as a natural consequence applicant is to be re-instated.

8. Respondents' counsel, however, contends that in so far as the date of impugned appellate order is concerned, the same has been reflected in the order as 23.5.2002 whereas the same should be 26.05.2000. On the other hand it is stated that there is no error apparent on the face of record and the scope of review cannot be extended as the error is one which strikes on the face of it. Having taken a conscious decision in the light of reasons recorded, the directions are in accordance with law. Shri Dhawan states that, howsoever, erroneous the order is, the remedy is not by way of review but to impugn the order in appellate forum. In this view of the matter dismissal of RA is sought.

9. We have carefully considered the rival contentions of the parties and persused the material on record. In so far as date of appellate order is concerned, the same has been shown to be passed on 23.5.2002 whereas the same is dated 26.5.2000. As there is an error apparent on the face of record being a typographical error we correct, the date of the impugned appellate order as 26.5.2000 which should be read in place of 23.5.2002 in the order passed on 5.9.2002.

10. As regards contentions putforth by the learned counsel for the applicant that there exists an error apparent on the face of it in so far as despite observing that action is not sustainable without quashing the same remanding back to the appellate authority, is not in accordance with law.

11. The scope and ambit of review laid down under Section 22(f) of A.T. Act 1985, the only grounds on which review is to be entertained are that there must be existing an error apparent on the face of record and secondly disconvery of new material which even after due diligence could not be produced by the contesting parties. Any other ground cannot be invoked to entertain a review. Review does not mean to reconsider or reagitate the matter. Review also cannot be used as if by way of an appeal, howsoever may be the erroneous view of the court, the same is not to be interfered in review but is assailable in the appellate forum.

12. Having regard to the above, we find that earlier the order of dismissal was non-speaking and reasons had not been communicated to the applicant, however the reasons recorded in the file were communicated to the applicant during the pendency of the OA. In this conspectus what has been held to be legally sustainable is the action of non-communication of reasons in support of dismissal. But as the reasons had been recorded and communicated, keeping in view that the right of effective appeal could be exercised on receipt of it, appellate order was quashed and a reasonable opportunity had been given to the applicant to prefer an appeal assailing the reasons and in turn consideration had been ordered to the appellate authority by passing a detailed and speaking order. Liberty to the applicant was also accorded to take up appropriate proceedings if he was still aggrieved by appellate order.

13. The contention that the reasons recorded are not germane and dealt with the contentions of the applicant and are irrelevant, would amount to consideration a new cause of action and matter, which is not permissible in review.

14. Having taken conscious decision to remand the case back to the appellate authority without quashing the dismissal order however be it erroneous, the remedy is not by way of a review. We do not find any error apparent on the face of record. An error in law is not a ground for interference in a review petition. Our decision is substantiated by the following decisions of the Apex Court:-

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1. Chandra Kanta & Anr. vs. Sheik Habib
AIR 1975 SC 1500.
2. Meera Bhanja vs. Nirmala Kumari Choudhary
AIR 1995 SC 455
4. K. Ajit Babu & Ors. Vs. Union of India & Ors.
1998 (1) SLJ 85 (SC)
5. Subhsh vs. State of Maharashtra
SCSLJ 2002(1) 28

15. As now the appellate order has been passed on 2.1.2003 rejecting the appeal of the applicant, he shall be at liberty to assail the aforesaid order in accordance with law, if so advised.

16. In view of the reasons recorded above, RA is found bereft of merits and is accordingly dismissed.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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