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Central Administrative Tribunal
Principal Bench

RA 44/98 in OA 399/97
with
RA 52/98 in OA 402/97

New Delhi, this the 13thday of November, 1998

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE SH. K MUTHUKUMAR, MEMBER (A)

RA 44/98

1. Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 110 001 through its Director.

2. The Secretary, ICAR, Krishi Bhawan, New Delhi - 110 001.

3. Director (Personnel), ICAR, Krishi Bhawan, New Delhi - 110 001.

4. The Director, Central Soil and Water Conservation Research and Training Institute, Dehradun (UP).

...Review applicants.

(By Advocate Sh. A K Sikri, Sr. Counsel with Shri V.K. Rao)

Versus

Sh. A K Khullar, S/O late Sh. M R Khullar, R/O 43, Ram Vihar, Dehradun, working as Scientist (Sr. Scale) with Central Soil & Water Conservation Research and Training Institute,

... Respondent.

(By Advocate Shri M K Dua)

RA No. 52/98

1. Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 110 001 through its Director.

2. The Secretary, ICAR, Krishi Bhawan, New Delhi - 110 001.

3. Director (Personnel), ICAR, Krishi Bhawan, New Delhi - 110 001.

4. The Director, Central Soil and Water Conservation Research and Training Institute, Dehradun (UP).

... Review Applicants.

(By Advocate Shri A.K Sikri, Sr. Counsel with Shri V.K. Rao)

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Versus

P Joshielar, S/O Late Sh. Voardhan Joshie, R/O 30/2 Ballupur, Dehradun - ... Respondent.

(By Advocate Shri M K Dua)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

These Review Applications have been filed under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 for reviewing and setting aside the impugned order dated 5.12.1997 which was the common order passed in OA 399/97 and OA 402/97. In the circumstances, these Review Applications are also being disposed of by a common order.

2. We have heard Shri A K Sikri, learned senior counsel for the Review applicants and Shri M K Dua, learned counsel for the respondent at some length and perused the records.

3. The contention of the applicants is that the judgement of the Ernakulam Bench in OA 991/93, decided on 23.12.1994 which was in turn based on the order of the Principal Bench in OA 511/90, decided on 15.2.1991. is not in rem but in personam. Shri Sikri, learned counsel has, with great earnestness, submitted that the judgements of the Ernakulam Bench as well as that of the Principal Bench have been dealt with by the respective Benches in subsequent Contempt Petitions, filed by the parties, namely, CCP 98/95 in OA 991/93 and CCP 18/92 in OA 511/90. In para 2 of the order dated 11.2.92 passed

in CCP 18/92 by the Principal Bench, after quoting the operative part of the judgement, it was held that the judgement is declaratory, "in that, it is declared that the service rendered in the 'S' grade has to be counted as service in the ARS whether such service is in Class I or Class II or whether it is in a Gazetted post or not. This judgement has a bearing on the placement/ promotion in the UGC pay package adopted by the ICAR". The judgement of the Tribunal in OA 511/90 was taken in appeal to the Supreme Court which was dismissed on 5.9.1991 and a Review Application filed before the Court was also dismissed on 29.1.1992. In CCP No. 98/95 in OA 991/93, the Ernakulam Bench has observed as follows:

> "The Delhi Bench only said that 'S' grade service is also ARS service. While this Bench said that the entire 'S' service or equivalent, should be reckoned for counting the length of service. There are obvious and significant differences, between the declaration in OA 511/90 and the directions in OA 991/93.
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> Learned counsel for the ICAR who argued his case with great thoroughness expressed the fear that implementation of the directions, may attract others to come and claim the same benefits. Prima facie, we do not know how an inter party order would justify those who had acquiesced in the prevailing state of affairs to come with belated claims, in the light of Bhoop Singh Vs. Union of India (AIR 1992 SC 1414), State of Maharashtra Vs. Digambar (1995 (4) SCC 683) and Secretary to Govt. of India & Ors. Vs. Shivram Mahadu Gaik (1995 SCC (L&S) 1140).
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> OA 991/93 does not declare law, but only contains directions, binding inter parties. A further time of four weeks is granted to respondents to decide on the course of action that prudence should counsel them."
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> (Emphasis added)

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4. The Review applicants have submitted that the applicants in OA 399/97 had inter alia prayed for counting their service rendered in the 'S' grade or equivalent grade for the purpose of promotion and they had relied on the judgement of the Ernakulam Bench in OA 991/93. Shri A K Sikri, learned counsel has submitted that in para 4.14 of the reply filed to this OA, the respondents had submitted that the judgement of the Ernakulam Bench in OA 991/93 had not declared any law but only contained directions, binding inter parties. Therefore, the benefit of the judgement could not be extended to similarly placed Scientists. They have also submitted that in CCP 98/95, one of the Members (Hon'ble Mr. P V Venkatakrishnan, Administrative Member) had delivered the judgement in OA 991/93 on 23.12.1994. In the circumstances, learned counsel has submitted that even though in the reply, it has been mentioned that the judgement of the Ernakulam Bench, dated 23.12.1994 had not declared any law, and it was a judgement in personam binding inter parties, this fact could not, however, be effectively pointed out. He submits that unfortunately, the counsel for respondents could not be present to point out the Tribunal's Order in CCP 98/95 which had clarified the order dated 23.12.94 based on which the reply had been filed, although he fairly admits that a copy of the order passed in CCP 98/95 was not placed on record.

5. Learned Counsel's contention is that if the orders in CCP 136/93 in OA 511/90 together with CCP 98/95 in OA 991/93 which had clarified the earlier orders had been referred to in the arguments by the learned counsel, the Tribunal in the impugned order dated 5.12.97 would

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not possibly have taken a view that the Ernakulam Bench's judgement is a judgement in rem and not in personam. In the circumstances, Shri Sikri, learned counsel has very cogently and forcefully submitted that in the interest of justice and at least to see that there is no miscarriage of justice, the orders of the Tribunal dated 15.2.1991 in OA 511/90 read with the order in CCP 136/93 and the order dated 23.12.94 in OA 991/93 read with the order in CCP 98/95 should be read as a whole which as mentioned above, could not unfortunately be placed before the impugned order dated 5.12.97 was passed, which has given a different interpretation to the orders passed in the aforesaid OAs. He has submitted that these facts and earlier orders passed by the Tribunal which are relevant, should have been placed before the Tribunal before the order dated 5.12.97 was passed and in the circumstances, there is sufficient reason for allowing the application for reviewing the order and to hear the parties on merits.

6. The applicants in R.A. have, therefore, submitted that the petitions are maintainable and are within the principles laid down under Order 47 Rule 1 CPC. Shri Sikri, learned counsel has submitted that it is settled law that even before they take the matter to the higher Court in appeal, it was necessary for them to exhaust the remedy available to them by way of review, which they have done in the present applications. He has again emphasized that the respondents in the Original Applications were not represented by counsel because he was stuck up in the Hon ble Supreme Court and, therefore, they were not able to present the case before the Tribunal properly or to bring the relevant orders,

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including the orders passed in CCP 98/95 and the earlier order in CCP 136/93. Learned counsel s contention is that if these orders had been properly placed before the Tribunal in OA 399/97, the Tribunal may not have taken the contrary view it has taken, namely, that the judgement of the Ernakulam Bench based on the earlier order of the Principal Bench, were orders in rem and not in personam. He has, therefore, prayed that the Review Applications may be allowed and the order dated 5.12.97 may be recalled and the parties be heard again on merits before disposing of the OAs 399/97 and 402/97 so as to have consistency in the judicial pronouncements.

7. On the other hand, Shri M K Dua, learned counsel, has submitted that the arguments and submissions made by the learned counsel for the review applicants are not covered within the provisions of Order 47 Rule 1 CPC read with Section 22 (3) (f) of the Administrative Tribunals Act, 1985, under which alone the application is permissible. He has submitted that the applicants have not shown that there is any error on the face of the record or any other sufficient reason to allow the RAs. According to him, the applicants are trying to make out a new case which they cannot do. His contention is that the judgement of the Ernakulam Bench in OA 991/93 is a judgement in rem and not in personam and anything said by that Bench in CCP 98/95 cannot clarify or modify the earlier order. He has submitted that the Review applicants cannot rely on the Tribunal s orders passed in CCP 98/95 and CCP 136/93 to argue that the orders passed earlier by the Ernakulam Bench and the Principal Bench in OA 991/93 and OA 511/90 are only binding between the parties and are not judgements in rem. He has also

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submitted that the fact that very long and detailed arguments have been submitted by Shri A K Sikri, learned counsel shows that the Review Applications are not maintanable. He has relied on a number of judgements, inter alia, **Parsion Devi & Ors. Vs. Sumitri Devi & Ors.** (1997 (8) SCC 715), **Meera Bhanja Vs. Nirmala Kumari Choudhary, (1995 (1) SCC 170) and Dokka Samuel Vs. Dr. Jacob Lazarus Chelly** (1997 (4) SCC 478). He has submitted that the Hon ble Supreme Court has held in **Dokka Samuel's case (supra)** that even an omission on the part of the counsel to cite an authority of law does not amount to an error apparent on the face of the record so as to constitute a ground for reviewing the prior judgement. He has, therefore, very vehemently submitted that the failure of the respondents' advocate to appear before the Tribunal when the impugned order was passed cannot be a sufficient ground for allowing the review application. He has, therefore, prayed that these Review Applications may be rejected.

8. We have carefully considered the pleadings and the submissions made by the learned counsel.

9. There is no doubt that in the present Review Applications much lengthy arguments have been submitted by both the parties, more so by the learned counsel for the applicants. Therefore, having regard to the judgement of the Supreme Court in the case of **Meera Bhanja's case (Supra)** one could take a view that these Review Applications should not be allowed on that ground. We are also aware that it is settled law that jurisdiction under review may not be exercised on the ground that the decision was erroneous on merits as an

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appeal in disguise. In this case, Shri Sikri, learned counsel has emphasized that he is not seeking the review of the impugned order on the basis of the first ground under Order 47 Rule 1 CPC, namely, on the ground that there is an error apparent on the face of the record but on the other ground that there is other "sufficient reason" in the interest of justice as demonstrated by him to allow these Review Applications, so that the parties would be able to put forward their arguments along with relevant orders for adjudication afresh.

10. The issue in this case is whether, as contended by Shri Sikri, learned Sr. Counsel, the full facts and orders having not been placed before the impugned order dated 5.12.1997 was passed, the Bench would have come to the conclusion that the Ernakulam Bench judgement based on the earlier Principal Bench judgement were judgements in rem and not in personam. In the impugned order, it has been stated that they are unable to agree with the submissions of the respondents and they have perused the order of the Tribunal and they have stated that "a perusal of the order of this court passed on the basis of the Ernakulam Bench both read together shows that the judgement given by this Court as well as that of the Ernakulam Bench were not judgements in personam rather it is a judgement in rem."

11. After giving our anxious consideration to the very able arguments submitted by both the learned counsel for the parties, we are in respectful agreement with the observations of the majority judgement of the Supreme Court in **S. Nagraj & Ors. Vs. State of Karnataka** (JT 1993(5) SC 27) that in the peculiar facts

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and circumstances of the case, recall of the impugned order is necessary in this case, in the interest of justice. In this case, the Supreme Court has held as follows:

> "Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law, the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which are of us (R.M. Sahai, J) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.
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> Review literally and even judicially means re-examination or re-consideration. Basic philosphy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice...In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order SLVII Rule 1 of the Civil Procedure Code".

12. The relevant point to note in this case is that while the Principal Bench of this Tribunal in OA 399/97 in the oral order came to the conclusion that the

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previous orders of the Tribunal are judgements in rem, the conclusions of other co-ordinate Benches on the same orders are to the contrary. Although we do realise that the contrary views taken by the co-ordinate Benches of this Tribunal on the same judgements have been expressed while dealing with the contempt petitions, they have to be given some weightage as expressions of opinions of co-ordinate Benches of this Tribunal. Consistency of judicial pronouncements is also an accepted principle of law and unless there are compelling reasons, the Courts will not unsettle the view taken in earlier litigations. In this view of the matter, we find "sufficient reason" in this case to allow the review applications in the interest of justice, based on the "fundamental principle that justice is above all". Consequently, the other judgements relied upon by the respondents will not assist them.

13. Therefore, we allow RA 44/98 and RA 52/98 and recall the impugned order dated 5.12.1997. Accordingly, O.As 399/97 and 402/97 may be listed for re-hearing on 2.12.1998.

(K. Muthukumar)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

SRD

Attested

Co. Clk