

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

RA No.75/2004
In
OA No. 2390/1997

(29)

New Delhi this the 30th day of September, 2005.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)

Hon'ble Mr. Shanker Raju, Member (J)

Shri L.S. Parman,
S/o Shri Haran Singh,
R/o C-194/2, Gali Ahdwali,
Chauhan Banger, Brahmputri,
Delhi-110053.

-Review Applicant

(By Senior Counsel Shri G.D. Gupta with Shri S.K. Sinha, Counsel)

-Versus-

Union of India, through

1. Secretary,
Ministry of Finance,
North Block, New Delhi.
2. Deputy Collector (P&V),
Customs & Central Excise Collectorate,
I.T.O., New Delhi.
3. Collector of Customs,
Customs & Excise Collectorate,
I.T.O., New Delhi.
4. Member (Per. & Vigilance),
Central Board of Excise & Customs,
Deepika Building, Sansad Marg,
New Delhi.

-Respondents

(By Advocate Shri Madhav Panikar)

ORDER (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Applicant an Ex-Inspector of Customs and Central Excise while posted at Delhi Airport at International Arrival was proceeded against for a major penalty on the allegation that on 14.11.1982 he had valued the

duty less and also demanded and accepted 100 US \$ from passenger Surinder Singh and also was found in possession of foreign currency of 2501 U.S. Dollars and 100 UA Dhiram. Applicant apart from being simultaneously proceeded also faced a proceeding under Foreign Exchange Regulation Act (FERA) where he was penalized with a penalty of Rs.25,000/- This has been challenged before the High Court in Criminal Appeal No.109/1989 and by an order dated 12.4.2001 the penalty was set aside on the ground that no evidence has been led by the Department to establish its case.

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2. Meanwhile, by filing OA-2390/1997 applicant impugned penalty of removal from service inflicted by an order dated 9.12.1993, which on appeal and revision was affirmed vide orders dated 23.5.1994 and 12.8.1996 respectively. On consideration of the case by an order-dated 17.7.2000 holding that there is abundance of evidence against applicant OA was dismissed.

3. In the wake of order passed by the High Court, quashing the recovery in FERA applicant preferred CWP No.3846/2003, challenging the order passed by the Tribunal before the High Court of Delhi. By an order dated 2.12.2003 with liberty to applicant to recourse to appropriate proceedings dismissed the Writ Petition as withdrawn.

4. By virtue of the present RA learned Senior Counsel appearing for the review applicant stated that having acquitted in appeal the decision arrived at on the same evidence by the departmental authorities cannot stand the judicial ^{scrutiny} and as a statutory remedy in the changed circumstances of review under Rule 29-A of the CCS (CCA) Rules, 1965 is available to applicant the order passed by the Tribunal is to be reviewed

as the observation, dismissing the OA would be an impediment for consideration of review by the authorities.

5. On the other hand, learned counsel of respondents referred to a decision of the Apex Court in *Secretary, Ministry of Works v. Mohinder Singh Jagdev*, 1996 (6) SCC 229 to take an objection of limitation by stating that the limitation would run from the date of order of removal and not from the date of acquittal. As such, stating that the present OA does not fall within the scope and ambit of review under Section 22 (3)(f) of the Administrative Tribunals Act, 1985, Review Application is liable to be dismissed.

6. We have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in *Union of India v. Tarit Ranjan Das*, 2004 SCC (L&S) 160 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.”

7. If one has regard to the above, review cannot be resorted to agitate the matter as if in appeal. The only scope is when there is an error apparent on the face of the record which does not require any long drawn process to extract it. The other ground is when despite due diligence an important material having bearing on the issue could not be produced by the contending parties.

8. No doubt on the same set of evidence though the disciplinary proceedings culminated into a major penalty of removal, High Court of Delhi in appeal against the penalty imposed under FERA allowed it on the ground of no evidence. There is a conflict between the findings arrived at by the disciplinary authority and judicial verdict by the High Court. In all fairness as per settled law latter shall prevail.

(32)

9. However, the aforesaid decision of the High Court (supra) was not available or in existence at the time when the matter was dismissed by the Tribunal. Accordingly, applicant has raised the aforesaid plea before the High Court in CWP No.3846/2003 and in that conspectus to take recourse to appropriate proceedings CWP was dismissed, as withdrawn.

10. Rule 29-A of the CCS (CCA) Rules, 1965 is reproduced as under:

“The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 14, subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary.”

11. If one has regard to the above, even at the instance of a person aggrieved when a new material or evidence which was not available at the time when the revisional power was exercised, which could change the nature of the case is brought to the notice the President is empowered to

consider the same. As such, before the applicant recourse to appropriate proceedings under Rule 29-A ibid is available.

(33)

12. However, though the finding of the Tribunal with regard to abundance of evidence has been arrived at independently on consideration of the record, the observation of the High Court in Criminal Appeal pertaining to two charges, which are identical in both the proceedings, has to be appreciated in a legal manner where the law shall take its own course. However, we cannot block the remedy available to applicant under Rule 29-A ibid. Though review is entertainable on limited grounds, yet for any other sufficient reasons, to propagate justice and to prevent its miscarriage and also to abuse of the process review can be entertained.

13. Moreover, from the perusal of the contentions raised we do not find this review coming with the ambit of Section 22 (3) (f) of the Administrative Tribunals Act, 1985.

14. As regards liberty accorded by the High Court to take recourse to appropriate proceedings, we expect, on this changed circumstance when a new evidence in the form of High Court decision is available, due consideration by the President.

15. Though applicant is at liberty to take recourse to the appropriate proceedings under Rule 29-A ibid where on consideration of the decision of the High Court by the President, law shall take its own course, no interference is required in the present review, which is accordingly dismissed.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra) 30.9.05
Vice-Chairman(A)

‘San.’