

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

RA No. 168/94 in
OA No.2395/93

This 11th day of May, 1994

Hon'ble Mr. Justice S.K.Dhaon, Vice Chairman (J)
Hon'ble Mr. B.K. Singh, Member (A)

Union of India, throgh:

1. The Secretary,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi.
2. The General Manager (BD),
Mahanagar Telephone Nigam Ltd.
9th Floor, East Wing,
Chandralok Building,
New Delhi.
3. Shri DVS Vaid,
Assistant Engineer (C-I)
Mahanagar Telephone Nigam Ltd.,
Duct. Construction (South),
30-31, Jeevan Vikash, Asaf Ali Road,
New Delhi.Review Applicants

By Advocate: M/s Sikri & Company, Advocates

VERSUS

Shri M.M. Sharma,
R/o 2628, Hudson Lines,
Kingsway Camp,
Delhi.

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Respondent

ORDER (*By circulation*)
(By. Hon'ble Mr. B.K. Singh, M(A))

This Review Application No.168/94 has been filed against the order and judgment in OA No.2395/93 (M.M. Sharma, applicant Vs. Union of India & Ors. as

respondents.) Shri DVS Vaid, Assistant Engineer (C-I) in the office of General Manager, MTNL, was particularly arrayed as respondent No.3 in the said OA.

2. In the aforesaid OA, concrete instances and evidence were adduced by the counsel for the applicant to show that Shri DVS Vaid, respondent No.3, was, to say the least, atrocious in his behaviour towards the applicant and many a time he flouted the orders of the superior authorities with a view to harrass the applicant.

The applicant was to report to Shri H.K. Bansal, Executive Engineer and vide letter No. EE(DCS)/S-I/91-92/58 dated 21.2.92 he was directed to report for duty to Shri DVS Vaid. This ^{is} Annexure A-7 of the original paper-book. Shri Vaid, vide letter No., AE(DCS-V)/ND/Staff/1-3 dated 9.3.92 informed the Headquarters that the applicant had reported for duty on 19.2.92 (forenoon). The applicant was assigned the duty of typing work instead of accounts work for which he was posted. Against the assignment of typing work when the applicant filed a representation to the Superintending Engineer (TCC), he was transferred to the Executive Engineer (E), Telecom Elec. Divn. vide his order dated 29.1.93. By another order dated 24.3.93 issued by the Administrative Officer (S-I) in the office of Chief General Manager, MTNL, the applicant was relieved with immediate effect to report to the office of the Executive Engineer (E), T-II, New Delhi (annexure A-9 of OA). This order was wilfully flouted by the review applicant, DVS Vaid, who did not relieve the applicant, M.M. Sharma. The result was that, to meet the functional requirement, the Superintending Engineer, made promotion of one Mrs. Sulochana Gera to Works Clerk Gr.II and posted ^{her} in the office of the Executive Engineer (E) T-2 against an existing vacancy (Annexure A-10 of OA).

4. The review applicant issued an order dated 19.8.93, which he was not competent to issue in pursuance of the cancellation order dated 24.3.93 ordering the release of the applicant from his office on 19.8.93 with instructions to report to the office of the Executive Engineer, T-II, New Delhi, when the post had already been filled ^{up} by promoting Mrs. Gera against the existing vacancy.

Contd....3/-

5. The Administrative Officer (S-1), MTNL issued a memorandum dated 23.8.93 cancelling the relieving order dated 24.3.93. This order envisaged that the applicant would continue to work under the General Manager (BD), MTNL, New Delhi. It was stated during the course of hearing, without any rebuttal from the side of the present review applicant, that when the applicant went to report for duty to the office of the Asstt. Engineer, Shri DVS Vaid, he (the applicant) was not allowed to mark his attendance. The applicant reported the harassment being meted out to him by Shri Vaid, to the Superintending Engineer (annexure A-12 of OA). He also represented about the atrocious behaviour of Shri Vaid to the Superintending Engineer (C), Curzon Road Barracks, New Delhi on 8.10.93 (annexure A-13 of the OA). The applicant finally sought an interview with Shri B.S. Kapur, Assistant General Manager, MTNL, and stated the full facts to him and as a result of which a communication dated 11.10.93 was issued cancelling the transfer order of the applicant and directing him to continue in the office of the General Manager (BD). It was further desired that the order should be implemented immediately and compliance reported to his office. A copy of the order of 23.8.93 was also enclosed along with it. In the meantime, the matter came up before this Tribunal which passed an order dated 15.11.93 directing the respondents to comply with the orders dated 23.8.93, if not already complied with.

6. The power to transfer is an inherent administrative power and the Tribunal normally does not interfere in such transfers unless it is proved that the transfer is malafide. Shri Vaid, review applicant, was neither head of department nor was he head of office and he was not competent to exercise the power of passing the transfer order of the applicant. The fact that the applicant was not assigned any work by the review

applicant and he was relieved against the cancellation order, shows prejudice on the part of the review applicant. His action in relieving the applicant on 19.8.93 and depriving him of any work and even removing his chair etc., goes to show a clear prejudice that the review applicant harboured against the applicant. Power of transfer has to be exercised by a competent authority in a fair and bonafide manner and this power cannot be left to ^{be} exercised by a subordinate employee, like Shri Vaid. The learned counsel for the applicant not only alleged malafide but also proved the same on the basis of concrete instances and evidence as mentioned above.

7. The charge of malafide was not based on mere accusations and allegations but was based on specific pleadings. The charge of malafide or bias can be inferred from the normal course of human behaviour and this can be safely inferred from the behaviour of Shri Vaid in respect of the applicant.

8. The power of review is exercised by the Tribunal under Order 47 ^{Rule 1} /, CPC read with Section 114. The power is available to the civil courts and it can review its decisions on the following grounds:

(i) Discovery of a new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of the review applicant or could not be produced by him at the time when the order was made;

(ii) On account of some mistake or error apparent on the face of the record;

(iii) Any other reason sufficiently analogous to those specified in Rule 1, Order 47; and

(iv) Where a third party which was necessary party, was not impleaded as such and is adversely affected, is also vested with the right to move the Tribunal or a civil court for review of its decision. The Tribunal has the inherent power not only to vary or correct an order before signing it, but correct an accidental slip or

omission or order signed by inadvertance or failure of memory and to recall an order passed against a dead person or a non-existent company.

9. In the Tribunal, even after a judgment is pronounced, and there is some correction to be made, a Misc. Application has to be filed before the correction can be made. But the mere fact that an order dictated in the open court remained unsigned, does not confer on the court or the Tribunal an absolute power to recall it. It is also an admitted fact that the power of modifying or setting aside an interlocutory order is larger than the powers in respect of the final orders. We have carefully gone through the review application filed in respect of the judgment and order passed by this Tribunal on 19.1.1994, and we do not find any scope to modify the said judgment. A review application is maintainable only if it comes within the four corners of Order 47 Rule 1 read with Section 114. A review application cannot be filed for fresh hearing of arguments or advancement of evidence or plea which could not be taken at the time of hearing. A review application is made only for correction of patent error of fact or law which stares one in the face without any elaborate arguments being needed to establish it. Order 47 Rule 4(1) lays down that if there is no sufficient ground or no factual or legal error apparent on the face of the record, a review application shall be rejected.

10. As already stated, no error of fact or law has been indicated in the review application. Further, it is hit by limitation. The review application is rejected summarily by circulation, in view of the facts and circumstances mentioned above.