

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

RA 208/93 in
O.A.No. 1002/93.
T.A.No.

199

(7)

Shri Likhi Ram

DATE OF DECISION

30.7.1993.

Applicant(s)

Versus.
Union of India & Ors.

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *Y*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

VM
(V.S. MALI MATH)
CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(18)

Regn. No. R.A. 208/93 in Date of decision 30.7.1993.
O.A. 1002/93

Shri Likhi Ram

Applicant

vs.

Union of India & Ors.

Respondents

Shri K.L. Bhandula, counsel for the applicant.

CORAM

Hon'ble Justice Shri V.S. Malimath, Chairman.

Hon'ble Shri S.R. Adige, Member (A).

O R D E R (Oral)

(Delivered by Hon'ble Justice Shri V.S. Malimath, Chairman)

The petitioner, Shri Likhi Ram, was aggrieved by an order of transfer dated 3.5.1993. He challenged the same in O.A. No. 1002/93. The same was posted for preliminary hearing before a learned Member of this Tribunal on 11.5.1993. On hearing the learned counsel for the petitioner, the case was adjourned on that date to 12.5.1993. On 12.5.1993 after hearing the learned counsel for the petitioner, the learned Member disposed of the Original application on that day giving certain directions. It is stated that the representation of Smt. Raghubiri, the wife of the petitioner, shall be treated as the representation made on behalf of the petitioner and that the same should be dealt with and disposed of. Pending disposal of the said representation, there is a direction that the petitioner shall not be relieved from the present place of posting. It is made clear that the transfer order dated 24.2.1993 is neither suspended nor in any way interfered with. It is also stated that

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after the disposal of the representation, the petitioner has to abide by the aforesaid order. The concluding portion of the order says that the application is disposed of accordingly. There is, therefore, no iota of doubt that the entire application came to be disposed

of by the learned Member. On the ground that the said order has not been complied with, the petitioner has moved the Tribunal by filing CCP No. 229/93. When the matter came up before the Bench consisting of the Chairman and the Administrative Member, it was noticed that the order sought to be enforced was passed by the Tribunal without notice to the respondents who are required to obey the said order. The Division Bench was *prima facie* satisfied that the final disposal of the application issuing certain directions to the respondents without giving an opportunity to the said party of being heard is in gross violation of principles of natural justice. It was felt that it is but proper that the said order should be reviewed. Hence, the Bench itself issued notice to the petitioner who is the beneficiary of the order in the Original Application to show cause as to why the judgment of the Tribunal should not be reviewed. Notice was also issued to the respondents. It is after due service of notice that the review matter has now come for our consideration.

2. At the outset, Shri Bhandula, learned counsel for the petitioner, maintained that the Tribunal cannot suo motu review its order. He maintained that such power has to be expressly conferred on the Tribunal. He submitted that no such power has been conferred on the Tribunal and, therefore, the Bench could not have suo motu issued notice to show cause why the judgement should not be reviewed. We should in this connection advert to the provisions of Section 22 (3) ^(f) of the Administrative Tribunals Act, 1985. Sub-section 3 of Section 22 which confers certain powers reads as follows:

"(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely. -

~~DEF B 1 E~~ (f) reviewing its decisions."

A plain reading of this statutory provision makes it clear that the power of review has been conferred on the Tribunal by sub-section

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(3) of Section 22. When the power exists, it can be exercised by the Tribunal suo motu or on an application made by the aggrieved party. Having regard to the express provision in sub-section (2) of Section 22, we hold that the Tribunal has suo motu power to review its decision if the circumstances warrant such a course of action.

3. It was next contended that the Division Bench ought not to have invoked the power of review on the ground that only the Member/s who passed the order can review their order. We cannot accede to this contention. The power of review is vested in the Tribunal. Though normally review is undertaken by Member/s who passed the order, but it is not the law that no other Member/s of the Tribunal can exercise such a power. On the contrary, Rule 17(2) of the Central Adminstrative Tribunal (Procedure) Rules, 1987 makes it clear that the Charman has the power to place the review case before any other Bench. It is a matter of common knowledge that when the Members retire or cease to be Members of the Tribunal, their decisions are reviewed by other Member/s. In such situations, review cases cannot be regarded as non est and do not become infructuous. Besides, in this case power of review was invoked by the Bench of which the Chairman is a member. We have, therefore, no hesitation in holding that the Division Bench can exercise the power to review the order passed by the Member in this case.

4. Having regard to the circumstances of this case, we consider it our duty to review the order. The Tribunal ought not to render any final order without giving the affected party an opportunity of being heard. This is the cardinal principle which the Tribunal should not violate. This mistake has nothing to do with the merits of the decision. If the decision ^{on} merits suffered from errors apparent on the face of the record or the party concerned discovered new and important material at a later stage which has a bearing on the decision, we would have left it to the aggrieved party to seek review. In this case, the error calling for review does

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not bear on the decision proper but on the decision making process.

✓ The Tribunal which is bound to give an opportunity of hearing

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has decided ~~decided~~ the case without giving such an opportunity of hearing to the party which has been directed to do certain things. The decision is a final one and not an interlocutory direction. The Tribunal whose duty it is to enforce the principles of natural justice ought not have itself violated that principle while disposing of the Original Application finally. Once this serious mistake committed by the Tribunal came to our notice, we felt that we should retrace the steps and correct the mistake. We would also like to advert to an earlier decision wherein a similar view has been taken in CCP No. 56/93 in OA No. 1991/93 decided on 26.3.1993. This, in our opinion, is a fit case for review.

5. For the reasons stated above, we review and set aside the order dated 12.5.1993 passed in O.A. No. 1002/93 and direct it to be posted for hearing on merits. The respondents shall enter appearance and file their reply before 30.8.93. Post the O.A. 1002/93 before the appropriate Bench on 30.8.93.

CCP No. 229/93

7. This petition is for taking action for violation of the final order made in O.A. No. 1002/93. As the said order has just now been set aside on review, this position does not survive. The proceedings are accordingly dropped and the CCP 229/93 is dismissed.

Anfolig
(S.R. ADIGE)
MEMBER (A)

Malmath
(V.S. MALMATH)
CHAIRMAN

Reply to OA and
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