

PRINCIPAL BENCH, NEW DELHI.

R.A.No.13/93

Date of order: 19.02.1993.

M.P.No.145/93 in

O.A.No. 738/86

Sh. J.D. Gupta

..... Applicant

versus

U.O.I. & Ors.

..... Respondents

Coram:-

The Hon'ble Mr. S.P. Mukerji, Vice-Chairman

The Hon'ble Mr. J.P. Sharma, Member(J)

ORDER

(delivered by Hon'ble Sh. J.P. Sharma, Member(J)

U.O.I. & Ors. have filed this Review Application against the judgement dated 14.11.1991 passed in O.A.No.738/86. That Original Application has been disposed of with the following directions to the respondents:-

"In view of the above discussion, we quash the punishment order dated 29.11.1983, the applicant shall be restored to the same position as if no punishment order was passed. The appeal filed by the applicant pending before the Appellate Authority shall become infructuous. The respondents are,

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however, free to proceed against the applicant for the same misconduct after issuing a fresh memo of charges under the signatures of the competent authority as laid down in Schedule II of CCS(CCA) Rules, 1965, giving full opportunity to the applicant and also furnishing the report of the Inquiry Officer before awarding any punishment, if necessary, conclude the proceedings against the applicant. Respondents are directed to comply with the order within a period of three months. However, in the circumstances, the parties shall bear their own costs."

B.O.I. & Ors ~~has~~ ^{have} also filed M.P.No.145/93 to condone the delay in filing the Review Application within the period of limitation provided under the Act. The ground taken in the aforesaid petition for condonation of delay is that the department could not learnt about the decision of the case nor the counsel of the respondents informed them. It was the applicant who informed them only 9 months after the pronouncement of the judgement. This is supported by an affidavit of P.K. Sen, Engineer Officer.

we have heard the learned counsel for the parties and in the interest of justice, we condone the delay in filing the Review Application.

we have heard the learned counsel for the parties on the merits of the Review Application. The learned counsel

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for the U.O.I. & Ors. argued that there appears prima facie error on the face of the judgement inasmuch as the Tribunal has held that Chief Engineer(Vigilance)CPWD, as he has signed the memo of chargesheet was not the competent authority whereas the competent authority is Engineer ⁱⁿ Chief CPWD. The other point taken by the learned counsel is that in view of the subsequent decision of the Hon'ble Supreme Court in the case of K.Vishwesnathan vs. U.O.I. decided on 6.3.91 reported in ATC 1991(17) P.941, the effect of the earlier judgement of U.O.I. vs. Mohd. Ramzan Khan has to be given ^{Nov. 29, 1990} to all those which have been decided after March, 1991. By this the learned counsel argued that in the present case it was not necessary to give a copy of the Inquiry Officer's report before passing the punishment order by the Disciplinary Authority.

In support of the first contention the learned counsel for the applicant filed SO 1149 issued by the Ministry of Home Affairs dt. 6.4.1966 by which CCS(CCA) Rules have been amended. In the Schedule to the CCS(CCA) Rules, 1965 in part 2 "Central Civil Services Class II under the entries in column 3 & 4 relating to Court Central Electrical Engineer Service Class II and Central Engineering Service Class II (the following entries have been inserted namely in column iii Addl. Chief Engineer(Vigilance) CPWD and in column iv (i) (ii)."
However, it appears that the learned counsel for the applicant in the original application produced a government publication in which at Sr. No. 23 in column 3 the entry remains Engineer ⁱⁿ

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Chief CPWD and in column No.4 is Engineer ⁱⁿ & Chief CPWD. This publication is of January, 1974. It has been shown to the learned counsel for the U.O.I. & Ors. also. The departmental representative was also shown the above ~~brochure~~ ^{brochure} of CCS(CCA) Rules, 1965 revised upto 31 December, 1973 issued by the Government of India DOP{ A&R Cabinet Secretariat, New Delhi. The learned counsel for the U.O.I. & Ors. only stated that he has no explanation to offer. In any case, the government publication issued in 1974 has to be accepted as genuine and with relevant upto date position and relevant rules at the time when the judgement was delivered in the case. Even in the unofficial edition of Puttuswamy of 1989 at Sr.No.23 the same entry exists. Thus, we have not ^{to} differ with the finding, We have already arrived at the conclusion on the basis of the documents furnished at the time of the hearing of the O.A. as well as today when the Review Application has been heard. However, the learned counsel for U.O.I. & Ors. referred to the counter where it is only stated that Chief Engineer(Vigilance) is the competent authority to issue the chargesheet but there is no mention of this O.M. SO 1149 dated 6.4.1966. That was a general statement made in the counter which remained unsubstantiated by any document and is ^{it} evident ^{accepted} that if such an amendment was within the knowledge of the respondents i.e the petitioner in the Review Application then they should have annexed the same amendment as annexure to the counter. Since we have taken view on the basis of the

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documents and pleadings of the parties, we do not find any reason to review the same because even today no explanation is given from the side of U.O.I. on the Government publication shown to him at the time of hearing on the judgement referred to above.

The second contention of the learned counsel for the U.O.I. is that the judgement has dealt in greater detail the non-supply of a copy of the Inquiry Report by the Disciplinary Authority before passing the punishment order.

We have given the reason and also in the judgement following the dictum laid down by the Hon'ble Supreme Court in the case of U.O.I. vs. Mohd. Ramzan Khan reported in 1991(1) SLJ P.196. The authority of K.Vishwanathan vs. U.O.I. reported in 1991(17) ATC P.941 was not placed at the time of hearing of the Original Application nor it was brought to the notice but in any case applying the law of Vishwanathan's case (supra), the finding which we have given regarding the Inquiry Officer's report, the procedure adopted by him and the application of mind by the Appellate Authority and not furnishing of certain documents to the delinquent makes us to reach to the same conclusions which we have already drawn while disposing of the Original Application.

No other ground has been pressed in the Review Application. Review Application is, therefore, dismissed. The parties to bear their own costs.

J.P. Sharma
(J.P. Sharma)
Member(J)

S.P. Mukerji
19.2.93
(S.P. Mukerji)
Vice-Chairman