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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

R.A. No. 325 of 1994
in
O.A. No. 672 of 1987

New Delhi, dated the 12th February, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Rajendra Kumar Kashiv,
48, Jaipur House,
Agra, U.P. REVIEW APPLICANT

(By Advocate: Shri P.K. Srivastava)

VERSUS

1. U.O.I. through
the Secretary,
Ministry of Defence,
South Block,
New Delhi.
- 2 Financial Adviser,
Ministry of Defence (Finance),
South Block,
New Delhi.
3. Controller Gen. of Defence A/cs,
West Block V, R.K. Puram,
New Delhi.
4. Controller of Defence A/cs (AF),
107, Rajpur Road,
Dehradun (U.P.) RESPONDENTS

(By Advocate: Shri M.M. Sudan)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this R.A. No.325 of 1994, filed by Shri R.K. Kashiv, a prayer has been made to review judgment dated 19.7.90 in O.A. No.672/87 R.K. Kashiv Vs. U.O.I. & Ors.

2. In that O.A. the applicant had challenged his removal from service and he had prayed that the order be quashed and he be permitted to join duty immediately and

treat the applicant without any break from 4.9.1981 with consequential benefits including full salary.

3. The O.A. was heard in the presence of both parties and vide impugned judgment dated 9.7.90 it was dismissed.

4. The R.A. came up for hearing on 13.2.95, but none had appeared for the applicant even on the second call, the same was dismissed for default.

5. Meanwhile the applicant had also filed M.A. No. 848/94 purportedly under Rule 24 CAT (Procedure) Rules, 1987 praying to give effect the following findings of the CAT contained in the impugned judgment dated 9.7.90,

"In the present case the inquiry has not been dispensed with. The inquiry proceeded ex-parte and that is permissible. The inquiry officer gave his findings, the disciplinary authority accepted the findings and awarded the punishment."

by supplying copies of the ex-parte inquiry report and other documents to the applicant.

That M.A. was dismissed on 18.4.94 owing to absence of applicant and non-maintainability, upon which he filed M.A. No. 1818/94 praying for restoration of the M.A. No. 848/94. The prayer in M.A. No. 1818/94 was dismissed on 1.8.94 on the ground that this very bench as a Coordinate Bench of the Tribunal, could not reconsider the merits of a case, in which the Tribunal in its judgment dated 9.7.90 had already recorded its finding. It was observed that it was open to the applicant to seek review of the impugned judgment dated 9.7.90 if the same was maintainable in the light

of the provisions of Order 47 Rule 1 C.P.C., or go for an appeal against that judgment.

Thereupon the applicant filed M.A. No. 747/95 praying for restoration of R.A. No. 325/94 which was allowed on 30.3.95.

6. Applicant's counsel Shri P.K.Srivastava and respondents' counsel Shri M.M.Sudan have been heard on the R.A.

7. Applicant's counsel contends that in para 3(iv)(1) of their reply to the O.A. respondents have made contradictory statements where, while denying that applicant's removal from service was arbitrary, respondents have said that communications sent to applicant's address were received back with the remark that his whereabouts were not known. An enquiry was ordered and held ex-parte. The disciplinary authority had therefore invoked the provisions of Rule 19(ii) CCS (CCA) Rules, 1965 as he had reason to hold that it was not reasonably practicable to hold inquiry before imposing the penalty. Applicant asserts that this statement is contradictory, and contends that no inquiry was held and he was removed from service without inquiry arbitrarily and illegally. Support is also sought from respondents letter dated 22.10.92 and it is contended that the Tribunal's findings extracted in paragraph 5 above, that the enquiry was not dispensed with ^{is} an error

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apparent on the face of the record, which warrants review.

8. We have perused the impugned judgment and given the matter our careful consideration.

9. A perusal of page 13 of the impugned judgment makes it clear that one of the main grounds of challenge in the O.A. was that the applicant had been removed from service without inquiry. The Tribunal in its impugned judgment went into this matter in great detail and satisfied itself after perusing records that an ex parte inquiry was in fact held; the disciplinary authority passed orders thereon; that order was appealed against; and the points raised in the appeal were also decided by the appellate authority; and under the circumstances, due procedure was followed. The impugned judgment also clarifies that although a portion of the disciplinary authority's order indicates as if no inquiry was held, this impression is created because of improper wording and in actual fact an ex parte inquiry was held.

10. It is clear that now, by once again raising this controversy about the enquiry being conducted, this time in the guise of the present R.A., the applicant is in fact seeking to re-open the entire case and re-argue the matter. Clearly such a course is wholly outside the scope of review

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jurisdiction as defined in Section 22(3)(f) A.T. Act read with Order 47 Rule 1 C.P.C. as not being an error or mistake apparent on the face of the record, and is hit by a catena of Supreme Court judgments including A.T. Sharma Vs. A.P. Sharma & Ors. AIR 1979 SC 1047, Chandrakanta & Anr. Vs. Sheikh Habib AIR 1975 SC 1500; and Thungabahadra Industries Ltd. Vs. Govt. of Andhra Pradesh AIR 1964 SC 1372.

II. The R.A. is therefore rejected.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

/GK/

Arulagam
(S.R. ADIGE)
Member (A)