

15.4.91

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Reg. No. RA. 134/90 in OA No. 2078 of 1989

Date of decision: 15.4.91

Krishan Kumar

Applicant

vs.

Union of India & Others

Respondents

PRESENT

Shri S.S. Tiwari, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

This review application has been filed under Section 22(3)(f) of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act') by the applicant to review the judgment delivered on 12.3.90 in OA 2078/89 by a Bench having the coram of only one Administrative Member.

2. Needless to say, that the Hon'ble Single Member dismissed that O.A. as being devoid of any merit. In this review application, the applicant prays that the judgment dated 12.3.90, delivered by the Single Member, be recalled and the matter be reopened and heard afresh by a properly constituted Bench as provided in Section 5(2) of the Act.

3. Respondents have not filed any return, but their learned counsel, Shri P.P. Khurana, made his oral submissions. He, by raising preliminary objection to the maintainability of this review application, contended that the present review application is not maintainable before this Bench because the review application can be heard only by the Single Member who delivered the judgment in OA No. 2078 of 1989. He further reiterated and maintained that the

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judgment can be reviewed only by the same Bench which delivered it. As this Review Bench consisting of Vice-Chairman (J) and Member (A) have not delivered the judgment dated 12.3.90, this Bench, therefore, has no jurisdiction to hear this Review Application.

4. Controverting these arguments, Shri S.S. Tiwari, learned counsel for the applicant, contended that as the judgment under review was delivered by the Single Member Bench, it was not a properly constituted Bench because Section 5(2) of the Act provides that a Bench shall consist of one Judicial Member and one Administrative Member. He further contended that Single Member, either Judicial or Administrative, cannot constitute a Bench sitting singly but only two-Member Bench, as envisaged by Section 5(2) of the Act. One Judicial Member and one Administrative Member can constitute a valid Bench and only that Bench has the jurisdiction to hear and decide an O.A. A Single Member/<sup>Bench</sup> which heard and decided the O.A. had an inherent lack of jurisdiction. Hence, it had no jurisdiction to decide the O.A. nor hear this review application. The learned counsel for the applicant also cited the judgment of the Supreme Court handed over in the case of Amulya Chandra Kalita Vs. U.O.I. & Others in Civil Appeal No. 1212 of 1990 arising out of SLP (C) No. 14741/89. This judgment of the apex court is based upon the pronouncements in S.P. Sampath Kumar Vs. U.O.I. (1987(1) S.C.C.p. 124).

5. Before we take up the discussion on the review application, we would like to discuss some of the provisions of Section 5 of the Act. Section 5(2) of the Act provides that subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member. Proviso to this sub-clause provides "Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative

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Member". Sub-section (6) of Section 5 of the Act provides that notwithstanding anything contained in the foregoing provisions of this Section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such class of cases or matters pertaining to such classes of cases as the Chairman may by general or special order specify. The proviso to this sub-clause (6) further states that if at any stage of the hearing of any such case, it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may <sup>be</sup> referred to him for transfer to such Bench as the Chairman may deem fit. Thus, the above noted provision of the Act "notwithstanding anything contained" in 5(2) of the Act, arms the Chairman with the power to hand over class of cases for adjudication to a Single Member by an order. It would not be out of place to mention that order No. 1/32/87-JA, Central Administrative Tribunal, Principal Bench, the then Chairman, Hon'ble Mr. Justice K. Madhava Reddy, passed the orders on 21st March 1988 that a class of cases enumerated in that order shall be heard by a Bench consisting of a Single Member and to exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or classes of cases as are specified below from 1st of May, 1988. This order was passed by the Hon'ble Chairman in exercise of the powers conferred by sub-section (6) of Section 5 of the Act. It thus appears that notwithstanding anything contained in Section 5(2) of the Act, the Chairman under sub-section (6) of Section 5 of the Act had powers to constitute a Single Member Bench

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authorising him to exercise the powers of the Tribunal for a class of cases. 13 kind of cases have been enumerated in this order. In exercise of the powers conferred by the Hon'ble Chairman, a Single Member heard O.A. No. 2078/89 and decided the matter on 12.3.90.

6. Relying upon the pronouncement of the Supreme Court in S.P. Sampath Kumar, the Hon'ble Supreme Court in Amulya Chandra Kalita Vs. U.O.I & Others in Civil Appeal No. 1212 of 1990 arising out of SLP (C) No. 14741/89 delivered the judgment on 16.1.90. The Union of India preferred the review of the said judgment in the Supreme Court by SLP which is still pending adjudication by the apex court. Meanwhile, the Chairman, Central Administrative Tribunal, issued another order under sub-section (6) of Section 5 on 13.3.90 withdrawing the powers of Single Benches and directed that the Benches shall now be constituted in accordance with Section 5(2) of the Act. This Bench, therefore, has jurisdiction to hear this R.A. under Section 5(2) of the Act and the preliminary objection raised by Shri Khurana that the R.A. should be heard by the same Single Member Bench is not tenable, therefore, it is rejected. This review petition, therefore, has been filed on the strength of Amulya Chandra Kalita (supra). In view of such a situation, it cannot be said that the order passed by the Single Member of this Tribunal in OA 2078/89 by judgment dated 12.3.90 was without jurisdiction.

7. Section 22 of the Act provides that a Tribunal shall not be bound by the procedure *laid down* in the Code of Civil Procedure, but shall be guided by the principles of natural justice and subject to the other provisions of the Act and of any rules made by the Central Government, the Tribunal shall have the powers to regulate its own

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procedure. The application of the provisions of the Code of Civil Procedure has been limited to certain subjects only and reviewing its decision is one of them. The provision of review is contained in Order 47, Rule 1, of the Code of Civil Procedure. This Tribunal has no inherent jurisdiction to review its decision duly pronounced. As held earlier, the judgment in the O.A. was pronounced in accordance with the provisions of the Act.

8. We have to see whether this review application has merits according to the provisions of Order 47, Rule 1, C.P.C. or not. It is settled that a review application can only be filed on the grounds of discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the party or could not be produced by him at the time when the order was passed. The review can also be filed on account of some mistake or error, apparent on the face of record or for other sufficient reason. Discovery of new evidence is not one of the grounds in this review petition nor the mistake or error apparent on the face of the record. By stretching, it can be said that it comes within the third category of sufficient reason. This mistake of law in a judgment may be a ground for preferring an appeal against the judgment, but not for reviewing it. The judgment in OA was pronounced on 12.3.90 while the judgment in S.P. Sampath Kumar (supra) was pronounced on 9.12.86 and the judgment in Amulya Chandra Kalita (supra) was pronounced on 16.1.90. Thus, before the OA was heard, according to the applicant, mentioned in the review application, the law was settled by the apex court. On perusal of the record of the O.A. No. 2078/89, nowhere this objection appears to have been raised by the applicant before hearing commenced in OA 2078/89. The defect in jurisdiction can always be

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raised by the party at the Bar but no such objection appears to have been raised before the Single Bench. A point of law with regard to lack of jurisdiction could have been well raised by the applicant before the Single Member Bench. Failure to do so, indicates that the applicant was waiting for the results of the said OA and when he lost from the Single Bench of this Tribunal, it is only then he wanted to take the advantage for getting the judgment against him reviewed on the strength of the pronouncements made by the apex court. The intentions of the applicant are apparent. Furthermore, a careful perusal of Amulya Chand Kalita (supra) discloses that the provisions contained in sub-section (6) of Section 5 of the Act were neither raised nor considered by the Supreme Court. In that judgment only para 5 of the judgment of S.P. Sampath Kumar (supra) was taken out and quoted.

9. It would be relevant to observe that when the judgment was pronounced by the Single Member Bench of this Tribunal on 12.3.90 in OA No. 2078/89, then <sup>the Applicant</sup> he could well have challenged the said judgment by way of an appeal by filing S.L.P. before the apex court. Without availing that opportunity, the applicant chose the path by way of this review petition. We, therefore, conclude that the Single Member Bench of this Tribunal had the jurisdiction to decide the O.A. in accordance with the provisions of the Act, and the judgment under review cannot be said to be without jurisdiction. The remedy available to the applicant is to file appeal before the apex court and not by this review petition. We do not see any merit in this review application, consequently it is dismissed with costs.

10. Applicant shall pay a cost of Rs. 150.00 to the

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respondents' counsel.

Ce an 15/4/1991  
(P.C. JAIN)  
MEMBER (A)

Ram Pal Singh 15.4.91  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)