

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

RA No.154/93
MP No.1418/93 in
Regn.No. OA.135/1990

Date of decision: 13.8.93

Union of India & ors. ... Petitioners

vs.

Punjab Singh & Ors ... Respondents

For the Review Petitioners...Sh.R.L.Dhawan, Counsel

For the respondents ...Shri Umesh Mishra,
Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT(ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

This is an application filed on behalf of Union of India & others seeking the review of the order dated 27.11.1992 passed by a Bench of this Tribunal of which one of us(Hon'ble Shri B.N.Dhoundiyal) was a member. This order was passed in Review Application No.185/92. Thus, the Union of India is seeking a review of an order passed on a review application.

2. The question is: whether this Review Application is maintainable? For the reasons given hereinafter, our answer is in the negative. Sub-section(3) of Section 22 of the Administrative Tribunals Act, 1985(for short, the Act), provides, inter-alia, that a Tribunal shall have, for the purposes of discharging its functions under

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this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(for short, the Code) while trying a suit, in respect of certain matters one of them being " reviewing its decisions". Some other matters enumerated are : summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; issuing commissions for the examination of witnesses or, documents etc." Sub-section(3), in substance, is conferring upon the Tribunal certain powers given to the civil courts by the Code. The entire Code is not being applied. This provision also makes it clear that the Tribunal while discharging its functions shall have the same powers as have been given to a civil court under the Code while trying a suit in respect of certain enumerated matters. We have to interpret sub-section(3) in the background of the well-settled law that a statutory power of review cannot be exercised by any court or the Tribunal in the absence of a specific conferment of such a power under the relevant statute. It follows that the power of review which is being conferred upon the Tribunal by the Parliament is the power exercisable under the Code by a trial Court.

3. In substance, the Tribunal has been conferred the same powers as are vested in a civil court under the Code. The powers are no more no less.

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4. Sub-section (1) of Section 2 of the Code "Code" is defined to include rules. Under sub-section (18) of Section 2 "Rules" mean rules and forms contained in the First Schedule or made under Section 122 or Section 125. Under the First Schedule to the Code falls Order 47. This order has the heading "Review". Therefore, the rules contained in the First Schedule form part of the Code. It follows that for ascertaining the powers of the civil court we have to scan the provisions of the Code as a whole.

5. Section 114 of the Code provides that any person considering himself aggrieved by the orders enumerated in clauses (a) to (c) may apply for a review of judgement to the Court which passed the decree or made the order and the Court may make such order thereon as it thinks fit. Section 114 stops short there. It is so because Order 47 contains a complete Code pertaining to review. Section 114 cannot be read in isolation. It has to be read along with Order 47. The power of review, therefore, is contained in Section 114 and Order 47 combined. Therefore, the powers that are vested in the civil court in the matter of review of its decisions are to be found in Section 114 read with Order 47. Again the powers are contained in the whole of Order 47 and not in one of its provisions, namely, Rule 1.

6. Rule 9 of Order 47 has the marginal note "bar of certain applications". It reads: "No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained." Rule 9 clearly puts an embargo

upon the jurisdiction of the court to exercise the power of review. It prohibits a court from entertaining an application seeking the review of an order passed on an application for review. Therefore, the application containing the prayer that an earlier order passed on a Review Application may be reviewed is not maintainable.

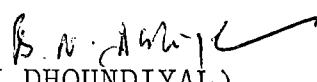
7. Sub-section(1) of Section 22 of the Act, upon which the reliance is placed by the learned counsel for the applicants (Union of India,) provides, in substance, that a Tribunal shall not be bound by the procedure laid down in the Code, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and rules. This provision has to be read in harmony with sub-section(3) of Section 22 of the Act. We may repeat that in sub-section(3), the Code has been made applicable to the Tribunal for the purpose of discharging its functions only in respect of certain specified matters. The Code is not applicable to proceedings under the Act in all matters. Matters which are not enumerated in sub-section(3) of Section 22 are immune from the provisions of Code and to them sub-section(1) of Section 22 is applicable. It is well-settled that the principles of natural justice are outweighed by statutory rules. Such principles play their role only when there are no statutory provisions. They also operate when the statutory provisions are silent. Sub-section(1) of Section 22, therefore, cannot be pressed into service by the present applicants for seeking the review of an order passed upon


an earlier Review Application.

8. Rule 17 of the Central Administrative Tribunal(Procedure) Rules,1987 relates to the application for review. Sub-rule(4) thereto provides, inter-alia, that where an application for review of any judgement or order has been made and disposed of, no further application for review shall be entertained in the same matter. The contents of sub-rule(4) of Rule 17 are substantially the same as the contents of Rule 9 of Order 47. The present Review Application cannot be entertained on account of the operation of sub-rule(4) of Rule 17 as the subject matter of the OA which was disposed of finally on 28.2.92, the subject matter of the Review Application which was disposed of on 27.11.92 and the subject matter of the present Review Application is the same. By the first order, this Tribunal declined to grant the relief. By the second order, the relief was granted in relation to the same matter. In this application, the prayer in substance, is that the second order may be set aside and the first order be restored. The subject matter remains the same irrespective of ^{the} number of innings the parties may avail of.

9. This Review Application is not maintainable and is dismissed summarily.

10. Since the Review Application is being dismissed as not maintainable, the Misc.Petition for condonation of delay in filing the Review Application is rejected.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)