

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA 109/2005

In

OA 888/2004

New Delhi, this the 5th day of July, 2005

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Vijay Pushkarna
S/o Shri A.C. Pushkarna,
Aged about : 40 Years,
Resident of : Quarter No.1683,
Lodi Road Complex,
New Delhi-110003.

And Employed As:-

Assistant in the
Research and Analysis Wing,
Cabinet Secretariat,
New Delhi.

.....Applicant.

Versus

1. Union of India
Through the Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhawan,
New Delhi – 110 001.
2. The Joint Secretary (Personnel)
Cabinet Secretariat
New Delhi.
3. The Special Secretary (Personnel)
Cabinet Secretariat,
New Delhi.

..... Respondents.

O R D E R (In Circulation)

BY Mr. S.K. MALHOTRA, MEMBER (A):

The present Review Application has been filed by the applicant with the request to review the order dated 3rd March 2005 passed in OA 888/2004.

2. The original OA was filed by the applicant assailing the order dated 31.3.2003, imposing penalty of dismissal from service. After considering all the relevant aspects of the matter, the OA was dismissed. In the Review Application now filed by the applicant, it has been stated that in the order, there has been an error on the face of record to the extent that in para 15 of the order, it has been

2

stated that Government cannot afford to have a person who is so irresponsible like the applicant in an organization like Intelligence Bureau. According to him, Intelligence Bureau was not made as a party in the OA and as such this is an error on the face of record. Secondary, the respondents did not produce the file on which the request of the applicant for extension of leave was refused. According to him, leave can be refused only in case of exigency of service, which has not been proved based on the records by the respondents. Thirdly, harsh punishment of dismissal has been imposed on the applicant, which is also discriminatory to the extent that a similarly situated person was compulsorily retired and not dismissed.

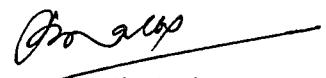
3. We have gone through the judgement and also the points raised by the applicant. The applicant has been working as Assistant in the Cabinet Secretariat as brought out in the OA. However, the learned counsel for the applicant during the course of arguments had stated that he was working in RAW which is an Intelligence agency under the Cabinet Secretariat. Although this fact has not been mentioned in the OA, but this information was communicated by way of clarification. This fact has been mentioned in para 15 of the order. This cannot be construed as an error apparent on the face of record. In any case, the fact whether he was working in the main Cabinet Secretariat or in RAW / I.B.; does not change the complexion of the case.

4. As regards refusal of leave to the applicant, there is no mandatory provision under the Rules that reasons for refusal of leave are to be communicated. On the other hand the rules provide that leave cannot be claimed as a matter of right. Discretion to refuse leave is reserved to the authority empowered to grant it. The respondents did not grant leave due to exigency of service which cannot be challenged by the applicant. In so far as the point regarding discrimination is concerned, each case is required to be dealt with on its facts and merits and parity of punishment cannot be maintained in all cases.

2

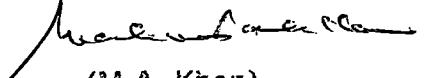
5. After going through the Review Application, we find that it is totally misconceived. We had given conscious decision after taking into consideration the entire material on record and the submissions made on behalf of both the parties. The findings which are recorded in the order dated 3.3.2005 do not suffer from any apparent and glaring mistake on the face of record as explained above. The applicant by means of Review Application, in fact, has tried to re-open the matter on merit, which is not permissible in a Review Application. The provisions of Rule 1 of the Order XLVII of the Code of Civil Procedure, 1908 are also not attracted in the present case.

6. The Review Application thus turns out to be devoid of any merit and is accordingly dismissed in circulation.



(S.K. Malhotra)

Member (A)



(M.A. Khan)

Vice-Chairman (J)

/gkk/