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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**RA No.184/2005 IN
OA No.1302/2004**

New Delhi, this the 9th January, 2006

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman(J)
Hon'ble Mr. N.D. Dayal, Member (A)

Shri J.B. Gupta, Sr. Auditor A/C No. 8312329
(Since compulsory retired Last Posted in LAO (CVD),
Delhi Cantt,
R/o X-3368/6, Gali No.2, Raghuvar Pura No.2,
Gandhi Nagar, Delhi-31.

...Applicant.

(Applicant in person)

Versus

1. Union of India (Through Secretary),
Ministry of Defence,
South Block, New Delhi.
2. The Financial Advisor (Defence Services)
Govt. of India, Ministry of Defence (Finance Division),
New Delhi.
3. The Controller General of Defence Accounts,
West Block - V, R.K. Puram,
New Delhi-110066.
4. The Principal Controller of Defence Accounts, G Block,
New Delhi.
5. The Principal Controller of Defence Accounts, (Western Command),
Sector 9C, Chandigarh.
... Respondents.

ORDER(ORAL)

By Mr. Justice M.A. Khan, Vice-Chairman(J):

The applicant has filed this application seeking review of the order dated 03.08.2005 passed in OA No.1302/2004. The applicant is not represented even today. We consider the review application on its own merit. In the application it is submitted that in para-3 of the order it has not been correctly mentioned that the respondents passed order dated 28.1.2003 in compliance with the order of this Tribunal in OA 562/2002. Applicant has submitted that in fact he had filed OA No. 562/2002 for a direction to the respondents to release the pay and allowances and consequential benefits for the intervening period from 31.8.1999 to 16.2.2002. It is

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stated that pay and allowances for intervening period from 31.8.1999 to 16.2.2002 on the one hand and the pay and allowances for the suspension period from 29.10.1997 to 7.4.1999 are two separate matters and the respondents are intermixing the same unnecessarily. OA No.448/2000 was filed assailing the order of the disciplinary authority dated 17.8.1999, and the order of appellate authority dated 08.02.2000 and Part II Office order dated 7.9.1999 and the Tribunal had quashed them by its order dated 18.5.2001 and matter was remitted back to the appellate authority for fresh decision. The applicant had filed OA NO.563/2002 for setting aside the order dated 14.2.2002 of the appellate authority which was passed in compliance with the order of the Tribunal dated 18.5.2001 and the High Court. The order of the Tribunal in the said OA has been challenged in the Writ Petition which is pending before Hon'ble High Court. In compliance with the order of this Tribunal dated 8.8.2001 passed in C.P.No.385/2001 (in OA 448/2000), the payment of intervening period has not been made by the respondents to the applicant. Respondents have not made payment of all the dues for the intervening period in terms of order dated 08.8.2001 passed in the Contempt Petition. It is further submitted that it will be incongruous to contend that respondents order of disciplinary authority appealed against was non-existence, therefore, fresh representation dated 17.10.2002 was taken from the applicant by the appellate authority on the basis of which fresh order dated 14.02.2002 was passed by the appellate authority cannot be operative w.e.f. 31.08.1999, i.e. retrospectively. The applicant in the application has prayed that the respondents be directed to pay full pay and allowances to him for the suspension period from 29.10.1997 to 07.04.1998 and the suspension period may be treated as period spent on duty for all intent and purposes or the applicant may be permitted to file the separate OA regarding

Mahesh Kumar

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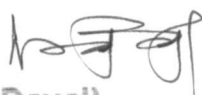
suspension period of the applicant. The applicant as such seeks review of the order dated 03.08.2005 to that extent.

2. We have carefully considered all the submissions of the review applicant in the application and the arguments of the applicant. In the present RA, the applicant has again reiterated that the penalty cannot be imposed retrospectively which was the argument raised during the arguments in the OA. The review application cannot be treated as an appeal. The requirements of Rule 1 of order 47 CPC which are the guiding principles for deciding the review application are not satisfied. The Apex Court in Union of India Vs. Tarit Ranjan Das, 2004 SCC (L&S) 160 observed as under:-

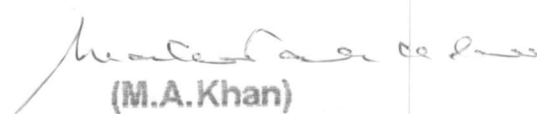
"13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court".

As regards his contention that pay & allowance for intervening period or suspension period has still not been paid ^{as} the applicant ^{has} permitted to file OA, the applicant does not require permission as the same as and when filed has to be decided in accordance with the law.

3. Review application has no merit and is dismissed.


(N.D. Dayal)
Member (A)

/kdr/


(M.A. Khan)
Vice-Chairman (J)