

PRINCIPAL BENCH

NEW DELHI THIS THE 19th DAY OF AUGUST, 1994.

**MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.B.K.SINGH, MEMBER(A)**

RA No.190/94 in OA No.2051/90

Union of India & ors. ... Applicants
vs.

Shri R.S.Sharma ... Respondent

RA No.167/94 in OA No.2026/92

Shri R.S.Sharma ... Respondent

ORDER (IN CIRCULATION)

JUSTICE S.K.DHAON:

By a common judgement, OA No 2051/90 OA No.2026/92 were disposed of by us on 2.2.1994. In the two OAs, the parties were the same. Separate review applications have been filed in both the OAs. The contents of the two review applications are verbatim the same. We are, therefore, taking the necessary facts from RA No.190/94 in OA No.2051/90.

2. In our judgement, we held that the applicants acted illegally in the case of the respondent in resorting to the "sealed cover" procedure. We accordingly quashed the decision of the Departmental Promotion Committee to place its recommendations with respect to the respondent in a "sealed cover". We further directed the applicants to open the sealed cover and act in accordance with the decision taken by the Departmental Promotion Committee.

3. The material averments in RA No.190/94 in OA No.2051/90 are these. In para 1, it is stated:-

" That the present review appeal is filed against the order dt.2.2.94 in the aforesaid O.A.s for Review of the said judgement on the ground that the judgement was passed by this Hon'ble Tribunal because of the fact that there was certain material which has bearing on the outcome of the case, could not be brought before the knowledge of this Hon'ble Tribunal."

In para 4, it is stated:

" That it may be submitted that the detailed counter was filed by the department in both the O.As. In the counter-reply filed by the applicant, they stated that the CBI investigations were going on against the respondent herein and hence no charge-sheet could be issued. There is one important aspect which could not be brought to the notice of the Hon'ble Tribunal while the aforesaid matter was being argued. The said aspect was that the authority with respect to the respondent has sanctioned the prosecution of the respondent herein vide letter dt. Because of this reason the proceedings of the DPC with respect to the applicant for the year 1991 and May/July/Dec.92 have been kept in the sealed cover. This action of the applicant is in consonance with the law laid down by the Hon'ble Supreme Court in the case titled-UNION OF INDIA Vs. KAVAL KUMAR-reported in JT 1993(2) SC 705. The Hon'ble Supreme Court held that the decision to initiate the disciplinary proceedings against the servant will be sufficient reason to put the DPC recommendations in the sealed cover. If that being the law established by the Hon'ble Supreme Court, in the present case the Competent Authority has sanctioned the prosecution of respondent herein because of which the proceedings were kept in the sealed cover. In view of these submissions, the aforesaid order of this Tribunal dt.2.2.94 be reviewed...."

5. In the review applications, there is not even a whisper of the fact that in spite of due diligence exercised by the applicants, the fresh material which is sought to be relied upon in the review applications, could not be filed. It is not recited that the applicants had no knowledge of the said fresh material when they filed their counter-affidavits and when the matter was argued.

6. We have given a thoughtful consideration to the contents of the review applications and we are satisfied that the requirements of Order 47 Rule 1, Code of Civil Procedure, wherein our jurisdiction to review our orders is circumscribed, are not fulfilled in the present case.

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7. We may note that the judgement was reserved in these cases on 28.1.1994 and the review applications were filed on 7.3.1994 and 18.4.1994 respectively.

8. These review applications are rejected summarily.

MEMBER (A)

(S.K.DHAON)
ACTING CHAIRMAN

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