

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman
Hon'ble Mr. N. D. Dayal, Member (A)

1. RA 14 of 2002 with MA 333 of 2002
(Arising out of OA 533 of 1996)

2. RA 15 of 2002 with MA 334 of 2002
(Arising out of OA 1063 of 1996)

VIJOY BAHADUR SINGH

VS

UNION OF INDIA & ORS (DEFENCE)

For the applicant : In person

For the respondents : Mr. M.S. Banerjee, Counsel

Heard on : 30.7.04 : Order on : 16.8.04

O R D E R

Per Justice B. Panigrahi, VC:

These two Review Petitions arising out of different orders of the Tribunal in O.A. 533/96 and O.A. 1063/96 respectively were heard together and are being disposed of by this common order for reasons of convenience.

2. R.A. 14 of 2002 has been filed by the applicant seeking review and recall of the order dt. 15.7.96 passed in OA 533 of 1996 dismissing the said OA. Since the RA has been filed long after the limitation period, M.A. 333/2002 has been filed for condonation of delay in filing the review application beyond time.

3. The applicant was working as Chargeman Gr. I in the Rifle Factory, Ichapore. He submitted a notice for voluntary retirement on 4.6.94 to be effective w.e.f. 9.9.94. He had also prayed for leave during the period of his absence from duty. However, his request for voluntary retirement was not processed by the respondent authorities. Being aggrieved thereby he approached this Tribunal by filing the O.A. 533/96. In the meanwhile a charge-memo was also issued to the applicant on 15.5.95 on the allegation of unauthorised absence. The applicant contended that since he had already prayed for voluntary retirement to be effective from 9.9.94 the respondent authorities



could not have issued any charge-memo to him subsequent to that date. The respondents in that O.A. took the stand that the applicant submitted his notice for voluntary retirement to the General Manager of the Factory who was not the appointing authority for the applicant and, therefore, the said request was sent to the appropriate appointing authority i.e. the Dy. Director General.

After hearing the parties the Tribunal by order dt. 15.7.96 dismissed the OA being devoid of any merit. The applicants wants review of this order.

3. In M.A. 333/2002, which is for condonation of delay in filing the Review Application, the applicant has merely reiterated his stand taken in the Review Application and has only submitted that the delay of 2115 days is necessary to be condoned. There is no other ground mentioned nor any explanation offered in the condonation application for the inordinate delay of about 6 years in filing the Review Application whereas as per Rules a Review Application has to be filed within one month.

4. We are not satisfied with the averments made in the condonation application and, therefore, we are unable to condone the inordinate delay in filing the Review Application. Consequently, the Review Application is also liable to be dismissed.

5. R.A. 15 has been filed by the same applicant for review and recall of the order dt. 12.2.98 passed in O.A. 1063 of 1996. By the said order the O.A. was dismissed holding that the said O.A. was more or less identical with the earlier O.A. No. 533/96 which was already adjudicated and dismissed on merit. Accordingly, the O.A. 1063/96 was dismissed and a cost of Rs. 1,000/- was also imposed on the applicant for filing vexatious application.

M.A. 334/02 has been filed for condonation of delay in filing the aforesaid Review Application. In this M.A. also the applicant has merely stated that 1634 days of delay is required to be condoned as otherwise he will suffer irreparable injury.

6. For the reasons stated above we are also unable to condone the



delay of more than 4 years and, accordingly, the R.A. also does not deserve to be considered and is liable to be dismissed.

7. During the course of hearing, the applicant, who appeared in person has tried to impress upon us the necessity for recalling of the orders passed in the respective O.As so that the main matters could be heard again. In the Review Applications the applicant has taken the ground that subsequently he discovered that the General Manager is the appointing authority for Chargeman Gr. I and, therefore, his notice for voluntary retirement was rightly addressed to the General Manager and he was competent to deal with and decide the same. He, therefore, argued that in the O.As. the respondent authorities have misled the Hon'ble Tribunal by pointing out that General Manager was not the competent authority for the applicant and that the Deputy Director General was the appropriate appointing authority of the applicant and, therefore, his prayer for voluntary retirement was forwarded to the said competent authority. Along with the Review Applications, the applicant has enclosed at Annexure A, the extracts of certain rules. However, on perusal of the same we find that at Page 18, Sl. No. (xi) it is mentioned that for all Gr. C posts including Chargeman Gr. I, Assistant Store Holder etc. Deputy Director General of Ordnance Factories is the appointing authority whereas for other Gr. C posts General Manager is the competent authority. Admittedly, the applicant was working as Chargeman Gr. I and, therefore, we fail to understand as to how the applicant can argue that in his case the General Manager was the competent authority and not the Deputy Director General. The applicant has not produced any other document either with his review petitions or during hearing to establish otherwise.

8. The scope and power of the Tribunal to review its own order has been elaborately discussed by the Hon'ble Supreme Court in the case of Ajit Kr. Rath - Vs. - State of Orissa reported in 2000(1) S.L.R. 622. The Hon'ble Apex Court has inter alia observed as follows :-



"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with order 47 CPC. the power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing. it may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

9. In view of the above position of law laid down by the Hon'ble Supreme Court, we do not find any reason to allow these Review Applications on merit also, as no new material has been produced by the applicant nor any error apparent on the face of the order has been pointed out.

10. There is another aspect of the matter. It appears that the applicant had earlier filed two petitions - one - T.A. No. 71/89 which was originally filed before the Hon'ble High Court as C.O. No. 13427-W-85 and O.A.. No. 285/89 before this Tribunal. In the T.A. the applicant had prayed for several reliefs including fixation of his seniority and for payment of salary for the period from 21.10.84 to 3.1.85 as also overtime allowance etc. The Tribunal by order dt. 30.6.94 in the TA only directed the respondent authorities to regularise the period from 21.10.84 to 3.1.85 by treating the same as on duty. O.A. 285 was, however, withdrawn by the applicant by stating that he had submitted a notice for voluntary retirement and, therefore, he did not wish to proceed with the said O.A.. The said O.A. was, therefore, dismissed as withdrawn by an order dt. 30.6.94.

It appears that subsequently the applicant filed a writ petition bearing No. W.P.C.T. 1322/02 before the Hon'ble Calcutta High Court, in which the aforesaid orders of the Tribunal dt. 30.6.94 were referred to in the cause title. The Hon'ble High Court decided the said writ petition by order dt. 30.4.2003. In this order the

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Hon'ble High court also considered the contention of the applicant about the legality and validity of the disciplinary proceedings initiated against him by the charge-memo dt. 15.5.95 during the pendency of the request for voluntary retirement. However, it appears that the applicant had filed the first notice on 4.6.94 for voluntary retirement which was considered by this Tribunal in the aforesaid two O.A.s viz. O.A 533/96 and OA 1063/96 and dismissed the same by orders dt.15.7.96 and 12.2.98 against which the instant two R.A.s have been filed. It appears that the applicant subsequently filed another notice for voluntary retirement on 8.9.94. This second notice for voluntary retirement was considered in the order of the Hon'ble High Court. There is, however, no mention of the earlier notice dt. 4.6.94.

11. It, therefore, appears that the applicant had earlier filed voluntary retirement notice on 4.6.94 which was considered by the Tribunal in the aforesaid O.As. Having failed to succeed in the Tribunal the applicant appears to have filed another notice of voluntary retirement on 8.9.94 which was considered by the Hon'ble High Court. The object and purpose of both the notices are the same. The only difference, as it appears, was with regard to the date from which it was sought to be made effective.

The Hon'ble High Court clearly held that there was no illegality in the charge-memo dt. 15.5.95 issued against the applicant and accordingly the writ petition was dismissed. In that writ application the applicant had also taken a plea that the charge-sheet was issued by the General Manager who was not the appropriate authority and, therefore, the charge-sheet should be quashed. However, from the copy of the charge-sheet annexed to the O.A. 533/96 at Annexure-E we find that the charge-memo was signed by the General Manager by order and in the name and on behalf of the DDGOF. Be that as it may the Hon'ble High Court dismissed the writ petition in which mainly the legality and validity of the charge-memo was questioned. It appears that against this order of the Hon'ble

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High Court the applicant filed an SLP bearing No. 10261/03 before the Hon'ble Supreme Court which was also dismissed on 16.12.03.

12. As is evident from the above discussion that the applicant filed two original applications before this Tribunal being O.A. 533/96 and 1063/96. In both the applications the applicant was aggrieved by the charge-memo dt. 15.5.95, which has been upheld by the Hon'ble High Court and non-consideration of his prayer for voluntary retirement notice submitted on 4.6.94. Both the O.A.s were dismissed by this Tribunal and the applicant appears to have filed second notice for voluntary retirement on 8.9.94. Therefore, it is obvious that the earlier notice dt. 4.6.94 was no longer valid as otherwise the applicant could not have filed a second notice for voluntary retirement on 8.9.94 when the first notice was under consideration. Therefore, the Review Applications which are now filed are totally misconceived as the main two grounds considered in the O.As. have already been finally settled. First the charge-memo dt. 13.5.95 was held to be valid and Hon'ble High Court has clearly observed in its order that the charges which had been levelled against the applicant required a decision and, therefore, no interference can be made with regard to the proceeding on the basis of the contention of the applicant raised therein. Secondly, the notice for voluntary retirement dt. 4.6.94 which was the subject matter of dispute in the aforesaid two O.A.s appears to have been abandoned or withdrawn by the applicant as otherwise he subsequently could not have filed another notice dt. 8.9.94 which was considered by the Hon'ble High court but could not find any merit in the same. The order of the Hon'ble High Court has also been confirmed by the Hon'ble Apex Court.

13. In such circumstances, there is hardly any scope for this Tribunal to review its earlier orders by allowing the present two R.A.s which are otherwise time barred as already discussed above. Since no other conclusion could be arrived at by re-hearing of the OAs if eventually the orders are recalled on the basis of these two review petitions, therefore, it is futile to consider these two RAs at this



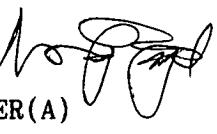
stage.

14. In this context, we may observe that after an S.L.P. has been dismissed by the Hon'ble Apex Court there was no scope for the Tribunal to reopen the issue in Review Application. In this context we may refer to the decision of the Hon'ble Supreme Court in the case of State of Maharashtra and another -Vs.- Prabhakar Bhikaji Ingle (1996)3 SCC 463. The Hon'ble Apex Court has held as under :-

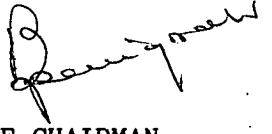
" It is true that the dismissal of SLP without a speaking order does not constitute res judicata. But in the present case when the self-same main order was confirmed by the Supreme Court, the exercise of power of review by the Tribunal would be deleterious to the judicial discipline. Once the Supreme Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court. More so, when the Tribunal has the knowledge of the order of the Supreme Court."

15. Here, the subject matters of dispute in the two OAs against which the present review petitions have been filed have already been settled by higher courts and hence it is not within the competence of the Tribunal to reopen the issue once again even if the self-same orders may not have been challenged either before the High Court or any other higher forum.

14. For the reasons stated above we are not inclined to accept the contention of the applicant and allow the Review Applications on merit. Besides they are also time barred. Accordingly both the Review Applications along with the respective Condonation Applications are hereby dismissed. No costs.



MEMBER(A)



VICE-CHAIRMAN