

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH

R.A.No.09/09  
in  
O.A.No.50/06

Dated the 28th May, 2009

CORAM:

HON'BLE MR.SHANKAR PRASAD, MEMBER(A)  
HON'BLE MS.SADHNA SRIVASTAVA, MEMBER(J)

Nagendra Prasad Singh of Indian Forest Service(Retd.)  
S/o Late Satya Narayan Singh,  
who was working on the post of  
Principal Chief Conservator of Forests, Bihar  
in the Environment & Forest Department, Govt. of Bihar  
Resident at Finance Department Colony, Road No..3,  
Khajpura, Maurya Patha,  
P.O.-B.V.College,Patna-14. .... Applicant

By Advocate: Sri Upendra Prasad

vs.

1. The Union of India through Secretary, Department of Environment, Forests & Wildlife, Government of India, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi-3.
2. The State of Bihar through the Chief Secretary to Govt. of Bihar, Old Secretariat, Patna-16.
3. Commissioner & Principal Secretary to the Govt. of Bihar, Department of Environment & Forests, Sinchai Bhawan, Patna-15.
4. The Commissioner of Departmental Inquiries, Old Secretariat, Hutments, Patna-15.
5. The Joint Secretary to the Govt. of Bihar, Department of Environment & Forests, Sinchai Bhawan, Patna -15.

ORDER *h*

SHANKAR PRASAD, MEMBER(A):

The applicant of O.A.No.50/06 has preferred the instant Review Application against the order dated 18.7.08 passed in the O.A. The applicant had earlier preferred CWJC No.16510 of 2008 which was permitted to be withdrawn with a liberty to file this Application for review.

2. The following grounds have been urged for review of the order:-

(a) That the judgments cited in the order are in respect of serving officers and hence are not applicable to the instant case.

(b) As per Rule 27 of the AIS (Discipline & Appeal) Rules, every order, notice and other process are required to be served either in person or communicated by registered post. It was the case of the applicant that the charge-sheet had been served on him more than 4 years after the date of retirement and the same is beyond the period prescribed under the rules.

(c) Whether it was not essential to get the order of the Hon'ble President or Empowered Authority before the issuance of charge-sheet as the applicant is an officer of the AIS.

3. We are deciding this Review Application by circulation.

4. The Tribunal had referred to the decision in Delhi Development Authority vs. H.C.Khurana; AIR 11993 SC 1488, the decision in Samsher Singh vs. State of Punjab; AIR 1974 SC 2192, the decision in UOI vs. K.K.Dhawan; AIR 1993 SC 1478 and UOI vs. Upendra Singh; 1994(3)SCC 357. The Tribunal having regard to the language of Rule 6 which refers to institution of proceedings and not service of charge-sheet and *l.*

the decision in H.C.Khurana(supra) had come to the conclusion that the proceedings had commenced with the issue of the charge-sheet. It had relied upon the decision in Samsher Singh(supra) to come to the conclusion that consent of Central Government implies the consent of the President. It had observed that <sup>as</sup> the charges require investigation of facts and that the Tribunal should not interfere at the early stages of enquiry.

5. The first contention raised in this Review Application is that the decisions relied upon by the Tribunal is in respect of serving employees and hence is not applicable to retired officers. The decisions referred to by the Tribunal are on the questions-

- (a) when a decision can be said to be taken to initiate the proceedings,
- (b) whether the President exercises the power himself or the power is exercised by the Cabinet/Ministers in the Parliamentary form of Government,
- (c) whether there can be a misconduct in discharge of quasi-judicial functions.

These issues are same in the case of a serving employee or retired officer of AIS. As a matter of fact Rule 7 of the AIS (D&A)Rules also refers to institution of proceedings. This contention has therefore no legs to stand upon and is required to be rejected.

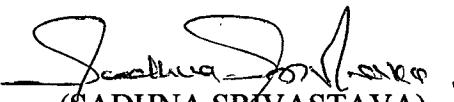
6. The next contention that is raised is that as per Rule 27 of AIS (Discipline & Appeal) Rules, the order was required to be served in the manner prescribed therein and that the Tribunal has not taken note of this aspect. A bare perusal of Rule 6 of AIS (DCRG)Rules shows that it refers to institution of proceedings. Rule 7 of AIS (D&A)Rules also refers to institution of proceedings. It has nothing to do with the service of charge-sheet. The 4 Judge Bench of Apex Court in State of Punjab vs. <sup>8</sup>

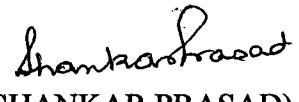
Khem Ram; AIR 1970 SC 214, in the context of Punjab Civil Services (Punishment & ~~or had held for~~  
Appeal) Rules that order of suspension is effective from the date of communication and date of service is immaterial. Once an order is sent out it goes out of the control of authority and there is no chance whatsoever of changing mind or modifying it.

7. The Review Application is an attempt to re-argue the O.A. This is beyond the scope of review. The Hon'ble Apex Court in State of West Bengal vs. Kamal Sen Gupta; 2008 SCC L& S page 735 has held as under:-

“The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put differently, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. While exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

8. In view of the foregoing discussion, there is no merit in the Review Application and the same is fit to be rejected. It is rejected accordingly with no order as to costs.

  
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(\$ADHNA SRIVASTAVA)  
MEMBER(J)

  
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(SHANKAR PRASAD)  
MEMBER(A)