

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

Review Petition No.66/91

Shri D.B. Gaikwad

.. Applicant

Vs

1. Controller of Defence Accounts, Poona

2. Controller General of
Defence Accounts
New Delhi

.. Respondents

CORAM:

Hon'ble Shri T. Chandrasekhar Reddy, Member (J)

ORDER ON REVIEW PETITION BY CIRCULATION

(X PER Shri T. Chandrasekhar Reddy, Member (J)) Dated:

This Review Petition No.66/91 under Section 22(3)(f) of the Administrative Tribunals Act, 1985, is filed on 23/9/91 for reviewing the judgement dated 21.8.91, a copy of which was sent to the applicant and received by him on 10.9.91.

After carefully considering the issues raised in the Review Petition along with facts and circumstances of the case, I see no reason why the Review Petition should not be disposed of by circulation in terms of Rule 17(3) of the Central Administrative Tribunals (Procedures) Rules, 1987. Accordingly, I proceed to deal with and decide it.

The facts giving rise to the review petition in brief may be stated as follows:

The applicant is a civilian Central Government Class II employee and is working as an Accountant. He was transferred from CDA(O), Pune-1 to M.C.C.D.A.(S.C), Pune-1 as per the order of the second respondent dated 30.8.1990. The said transfer was questioned by the applicant in this Tribunal by filing OA No.651/90, under Section 19 of the Central Administrative Tribunals Act, 1985.

T. C. - *[Signature]*

..2..

The said original application was decided on 21.8.1991 by judgement of this Tribunal. As already pointed out, it is the said judgement that is sought to be reviewed by the petitioner. The applicant had raised the following grounds in his Review Petition to review the judgement.

- "1. On a perusal of the judgement dated 20.8.1991, it is seen that the Hon'ble Tribunal has not taken into consideration all the submissions and pleadings made out in the original application. The Hon'ble Tribunal ought to have taken note of the fact that the applicant was beaten up by another employee of CDA(O) viz., Shri Jagtap and the applicant had to be medically treated. A F.I.R. with Police had been filed by the Applicant and the respondents were informed, but no action was taken by the Respondents against the misconduct of Shri Jagtap by the Respondents.
2. Similarly, the earlier incident of Shri Jagtap visiting the house of the applicant and misbehaving and threatening ~~the~~ the wife of the applicant in his absence was also a misconduct. Shri Jagtap for which a complaint was ~~lodged~~ lodged by the applicant with the local respondents, but no action was taken by Department against Shri Jagtap.
3. Further, the incidence of abusing the applicant by Shri Jagtap in the office premises on working day was also reported to the local respondents, but again no action was taken by the Respondents against Shri Jagtap.
4. The applicant had also asked for an inquiry on the above incidents, but the respondents did not hold inquiry which goes to prove that the respondents are acting malafidely and with bias and were favouring and protecting Shri Jagtap.
5. The ~~C~~ Hon'ble Tribunal would have ~~not~~ taken notice of the fact that a Criminal Case is pending against Shri Jagtap for assaulting the applicant and hence, the respondent department should have initiated a departmental action against him in all fairness but it was not done."

As could be seen, none of the grounds taken by the petitioner are relevant for deciding the question ~~in~~ in issue. The question in issue in the OA was whether the

14

transfer of the applicant at Pune itself from one office to another was done with any malafides and whether the said transfer was arbitrary and illegal.

In the Judgement dated 21.8.91, it is clearly pointed out that the said transfer of the applicant is purely on administrative grounds for smooth and efficient functioning of the concerned offices. We have also made it clear in the judgement, that the respondents were not influenced by any extraneous considerations in effecting the transfer of the applicant. We had also observed in the said judgement that "This Tribunal can only interfere if the transfer is violative of any of the legal provisions or is otherwise malafide. In this case, we do not find any legal provision being violated or the transfer having been effected with any malafides. So the order of transfer is neither open to judicial review nor justifiable."

In view of the above observations in the judgement dated 21/8/91, we are unable to understand how the question of 'transfer' could be 're-opened' once again in this Review Petition.

As could be seen, the effort on the part of the applicant seems to have the entire case re-opened, re-appraised and to have fresh judgement - if possible, in his favour. That cannot be the scope of the Review Petition. It is needless to pointout that the review is by no means an appeal in disguise and is permissible only in exceptional cases which come within the ~~limits~~ of Order 47, Rule 1, C.P.C.

We do not see any error apparent on the face of the record. In this context, the decision of the Supreme Court Judgement in AIR 1979 S.C. 1047 - Aribam Tuleshwar Sharma Vs Aribam Pishak Sharma and others may be cited.

"It is true there is nothing in Art. 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to exercise the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of the due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; It may be exercised where some mistake or error apparent on the face of the

~~RECOLT~~ ~~RECOLT~~

(P)

record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. The would be the province of the court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed....."

In view of the observations in the said decision, there is absolutely no scope to review the judgement.

There are no merits in this Review Petition and is liable to be dismissed and accordingly is dismissed.

T. Chandrasekhar Reddy
(T.CHANDRASEKHAR REDDY)
Member (Judicial)

Dated: Ninth Jan., 1992