

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 106/91

~~Transfer Application No:~~

DATE OF DECISION: 7.10.94

Dr. A.S. Khanra Petitioner

Applicant in person Advocate for the Petitioners

Versus

Director General, CSIR & Anr. Respondent

Shri K.P. Anil Kumar, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

(10)

O.A. NO. 106/91

Dr. A.S. Khanra ... Applicant

v/s

Director/General, CSIR ... Respondents
and Anr.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE:

1. Applicant in person
2. Shri K.P. Anil Kumar, Advocate for Respondents.

JUDGEMENT

DATED: 7.10.96

(Per: Hon'ble Shri B.S. Hegde, Member (J))

1. The Applicant has filed his O.A. challenging the removal order dated 17th August 1982 by which the Appellate Authority confirmed the penalty imposed by the Disciplinary Authority of removing the Applicant from service. Accordingly, the Applicant has prayed that the removal from service of the Applicant passed by the Respondent No. 2 be quashed and set aside and the Respondents be directed to reinstate the Applicant to the post of Scientist in the Organic & Synthesis Division, NCL, Pune etc.

2. The Applicant joined as Junior Scientific Assistant in the year 1971 and continued with the Respondent organisation till 17-8-1982, which is one of the laboratories owned and possessed by the Council

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of Scientific & Industrial Research (CSIR). The Applicant while working as Scientific Assistant has been served with a chargesheet and disciplinary inquiry has been initiated against him and after hearing the parties, the Enquiry Officer gave his findings as at Annexure 10 stating that all the three charges stand fully established by evidence and record. There is no relevant defence whatsoever to defend the Defence side even to lessen seriousness of the charges. The Disciplinary Authority vide its order dated 17th August 1982 agreed with the findings of the Enquiry Officer and holds that the charges are established and accordingly he imposed the penalty of removal from service. The Applicant preferred an appeal which has been disposed of by the Appellate Authority on 12-3-1983 (Annexure X-3). Aggrieved by the findings of the Disciplinary Authority confirming the penalty of removal from service of the said Applicant Dr. Khanra.

3. This decision of the Appellate Authority was challenged in O.A. No. 520/87 before the Tribunal which was disposed of by quashing the Appellate Authority's order dated 12-3-1993 and directed the Appellate Authority to hear and dispose of the appeal of the Applicant dated 27-9-1982 and after affording personal hearing to the Applicant and on merits and by passing a reasoned order in conformity with rule 27(2) of the Central Civil Services (Control, Classification & Appeal) Rules 1965 within four months from the date of receipt of a copy of this order. The Appellate Authority vide its order dated 28th August 1990 complied with the directions given by the Tribunal and gave an opportunity

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to the Applicant to appear in person but he failed to present himself on both the dates fixed for personal hearing. Ultimately after considering the case in its totality, the Appellate Authority came to the conclusion that there is no need to change the penalty passed by the Disciplinary Authority in the facts and circumstances of the case and accordingly confirmed the penalty imposed by the Disciplinary Authority removing the Applicant from service.

4. In this O.A., the Applicant has challenged the aforesaid Appellate Authority's orders on the ground that the Respondent has not given sufficient opportunity to the Applicant and the principle of natural justice has not been adhered to. The short question for consideration is whether the competent authority i.e. the Appellate Authority pursuant to the direction given by the Tribunal by its order dated 3-1-1990 has given sufficient opportunity to the Applicant to present his case and disposed of his appeal on merits. On perusal of the Appellate Authority's order, it is seen that though the Applicant has been given two opportunities to appear in person, he did not present himself nor given any justifiable reasons to abstain himself from the hearing. In the circumstances, the Appellate Authority had no ~~any~~ other alternative but to consider his appeal dated 27-9-1982 and dispose of the same in accordance with the law and thereby it cannot be said that the Respondent has violated the directions of the Tribunal nor not adhered to the principles of natural justice. The Respondents in their reply raised

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a preliminary objection that the Application is barred by the doctrine of res judicata. It is an undisputed fact the Applicant opted to work in the Organic Division, and the charges levelled against the Applicant have been amply proved in the matter of penalty, which has been confirmed both by the Disciplinary Authority as well as the Appellate Authority. They contend that the enquiry has been held regularly in accordance with the provisions of the CCS (CCA) Rules and there is no violation of any of the provisions of the Rules and principles of natural justice and urged that the petition be dismissed as without any merits. We have heard the learned counsel for the Respondents - none for the Applicant. Since the Applicant has submitted a written statement, which has been taken on record and we are able to dispose of the O.A. on that basis. As stated earlier, the point is whether the Appellate Authority has adhered to the directions given by the Tribunal and passed a speaking order. Though opportunities were given to the Applicant, he did not avail of it. Accordingly, the Appellate Authority has passed a speaking order confirming the penalty imposed by the Disciplinary Authority. In this connection, the Respondents rely upon the decision of the Supreme Court in Union of India v/s Parma Nanda AIR 1989 SC 1185 wherein the Court held that "the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer or

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or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on the evidence even if some of it is found to be irrelevant or extraneous to the matter."

5. In light of the above, the facts of this case is fully covered by the aforesaid Supreme Court judgement because the Applicant has not attributed any malafide on ~~behalf~~^{the part} of the Respondents, while imposing the penalty nor has he stated that the enquiry has not been conducted in accordance with the rules. In the circumstances, we are of the view, that the application is unsustainable which is devoid of merits and the same is accordingly, dismissed but with no order to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

B.S. Hegde
(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(15)

Review Petition No. 116/95 in
Original Application No. 106/91

Dr. A.S. Khanra

... Applicant

v/s.

The Director General Council
of Scientific and Industrial
Research Rafi Marg.,
New Delhi

The Director
National Chemical Laboratory
Pashan, Pune.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Tribunal's order on Review Petition by Circulation.

[Per Shri B.S. Hegde, Member (J)] Dated: 27.11.95

The applicant has filed this application seeking review of the judgement dated 7.10.94 in O.A. 106/91.

2. We have seen the review petition. We are satisfied that this application can be disposed of by circulation. Hence, we proceed to do so.

3. It may be re-called that the applicant has filed O.A. 520/87 before the Tribunal which was disposed of by the Tribunal quashing the Appellate Authorities order dated 12.3.83 and directing the Appellate Authority to hear and dispose of the appeal of the applicant dated 27.9.82 after affording a personal hearing to the applicant and pass a reasoned order on merits keeping in view the relevant rule i.e. 27(2) of the CCS(CCA) Rules 1965 within four months from the date of receipt of a copy of

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the order. Though the Appellate Authority has given sufficient opportunity to the applicant to make his appearance before the authority on both the occasions he failed to appear before the Appellate Authority. Therefore, the Appellate Authority has no other alternative but to proceed with the case on the basis of the records as he was directed by the Tribunal to pass a speaking order within a specified time. The applicant has challenged the aforesaid Appellate Authority's order on the ground that he has not been given sufficient opportunity.

The Tribunal after considering the contention of the parties disposed of the O.A. as far back as 7.10.94. Nevertheless the applicant has filed a Review Petition 110/95 on 2.11.95 that too after a lapse of nearly one year. According to CAT Procedure Rules 1987 under Rule 17 it is stated that no application for Review shall be entertained unless it is filed within 30 days from the date of receipt of the order to be reviewed. In the instant case the applicant has filed M.P. 804/95, in which he has not mentioned the delay in filing the Review Petition but on the contrary prayed to consider the application as part of Review Petition so far as the existing grounds and facts are concerned.

On perusal of the Review Petition, we find that the applicant has not made out any new grounds to review the judgement rendered on 7.10.94. We would like to make it very clear that the powers

of the review are exceptional powers and can be used only when three necessary ingredients are fulfilled.

- (i) discovery of new evidence
- (ii) error apparent on the face of record;
- (iii) for any other sufficient reasons.

The effect of allowing the petition for review is that it modifies, reverses or confirms the decision originally given. However, we would like to make it clear that the power of stay by the Tribunal particularly in the Review Petition is not to be exercised in a routine way. It will only be when a strong *prima facie* case is made out that the Tribunal may consider whether to stay the decision and if so, to what extent.

A review of a judgement is a serious step and reluctant ^{resort} to it, is proper ^{only} where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistake of inconsequential import are obviously insufficient.

In the light of the above, we are of the view that the Review Petition filed by the applicant in the instant case is devoid of merit and the same is dismissed by circulation.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

Hegde

(B.S. Hegde)
Member (J)

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