

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

Review Applications

in

OA.Nos. 427/92 to 447/92

Shri A.V.Waingankar & Ors.

... Applicants

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon  
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri D.V.Gangal  
Advocate  
for the Applicants

Shri V.S.Masurkar  
Advocate  
for the Respondents

Tribunal's Order

Dated: 28/1/93

(PER: S.K.Dhaon, Vice Chairman)

The decision of the Supreme Court in Nelson Motis vs. Union of India & Ors. 1992(2) SCALE page 410 has given rise to this bunch of review applications in the original applications decided by us on 17.6.1992.

2. The original applications came up before us on 17.6.1992 together. We had disposed them of by a common judgement. In those cases disciplinary proceedings had been initiated against the Government servants. They were punished. They came to this Tribunal by means of separate original applications challenging the order of punishment passed against them. This Tribunal took the view that the disciplinary proceedings stood vitiated since the punishing authority, before passing its order, did not furnish to the Government servants a copy of the report of the Enquiry Officer.

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However, this Tribunal left it free to the Disciplinary Authority to reinitiate disciplinary proceedings from the stage of the handing over of the report of the Enquiry Officer. The disciplinary authority, while taking a decision that proceedings should be reinitiated, passed an order suspending the Government servants concerned in the purported exercise of powers under sub-rule (4) of the CCS(CCA) Rules (hereinafter referred to as Rules). The order of suspension was challenged by the Government servants by means of separate original applications. And that order was quashed by us in each case on the ground that a combined reading of sub-rule (3) and sub-rule (4) of Rule 10 of the Rules indicated that an order of "deemed suspension" could be passed only in those cases where earlier in the disciplinary proceedings a Government servant had been placed under suspension. We took the view that an order under sub-rule (4) of Rule 10 suspending a Government servant could not be passed for the first time after taking a decision that disciplinary proceedings should be reinitiated.

3. In Nelson Motis's case their Lordships of the Supreme Court held that the order of suspension could be passed under sub-rule (4) of Rule 10 in those cases where earlier a Government servant had not been placed under suspension either during the pendency of disciplinary proceedings or in contemplation of the same. We may note that the decision in Nelson Motis's case was rendered on 2.9.1992.

4. Sub-section (3) of Section 22 of the Administrative Tribunals Act (hereinafter referred to as Act) provides that a Tribunal shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of reviewing its decision. Order

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XLVII rule (1) of the Code of Civil Procedure (hereinafter referred to as the Code) provides, inter-alia, that any person considering himself aggrieved may apply for a review of the judgement upon 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The explanation inserted by the Amendment Act of 1976 runs : "The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment".


5. The explanation aforequoted bars the jurisdiction of this Tribunal to review the judgement/order passed by us on the ground that the decision on the question of law on which our judgement is based has been reversed by the Supreme Court.

6. The question still remains whether this Tribunal has jurisdiction to review its judgement/order independent of the provisions of the Code. It is not necessary for us to enter into the controversy as to what effect should be given to the provisions of sub-section (3) Section 2 of the Act while considering the said question on the footing that this Tribunal is a substitute of a High Court in service matters. We may proceed on the assumption that, while passing the orders which are sought to be reviewed, we exercised powers under Article 226 of the Constitution. If that be so, it is evident that we exercise plenary powers and, therefore, we have inherent power to review our judgement/orders. <sup>Such a power is</sup> unhedged by the provisions of the Code. We are saying so not because of the Explanation

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9. We are satisfied that in view of the aforesaid declaration of the law by the Supreme Court, we have no jurisdiction to review our orders. If we do so, we shall <sup>be</sup> surely exercising appellate powers and not our inherent powers.

10. These applications are rejected.

  
(M.Y. Priolkar)  
Member (A)

  
(S.K. Dhaon)  
Vice Chairman

mrj.

28.1.93  
None for the applicant.  
Mr. V.S. Marwaha Adv. for the respondent  
orders on review petition are signed & pronounced  
in the open court.

  
V.C.