(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING No.6
PRESCOT ROAD; BOMBAY-1

O.A. Nos.427 to 447 of 1992

1.	Shri A V Waingankar	Applicant in OA 427/92
2.	Shri P G Mhatre	Applicant in OA 428/92
3.	Shri P S Pawaskar	Applicant in OA 429/92
4.	Shri A D Tawde	Applicant in OA 430/92
5.	Shri V B Nagare	Applicant in OA 431/92
6.	Shri A R Pingale	Applicant in OA 432/92
7.	Shri A H Kale	Applicant in OA 433/92
8.	Shri V G Kadam	Applicant in OA 434/92
9.	Shri P S Bhogale	Applicant in OA 435/92
10	Shri R K Singh	Applicant in OA 436/92
11	Shri N B Khobrekar	Applicant in OA 437/92
12	Shri P M Thapania	Applicant in OA 438/92
13	Shri V B Hadawale	Applicant in OA 439/92
14	Shri L G Dhanawade	Applicant in OA 440/92
15	Shri K. Bodanna	Applicant in OA 441/92
16	Shri B V Bhosle	Applicant in OA 442/92
17	Shri J P Mane	Applicant in OA 443/92
18	Shri G G Sonawane	Applicant in OA 444/9
19	Shri L R Topare	Applicant in OA 445/9
20	Shri K G Pokharkar	Applicant in OA 446/92
21	Shri S V Kulkarni	Applicant in OA 447/92

V/s.

1. Union of India through Chief of Naval Staff Naval Head Quarters; South Block, New Delhi
2. Flag Officer Commanding in Cheif; Western Naval Command; Fort, Bombay-23.
3. Admiral Superintendent Naval Dockyard Bombay-23.

Respondents in all the above 21 OAs.

Coram: Hon.Shri Justice S K Dhaon, Vice Chairman
Hon.Shri M Y Priolkar, Member (A)

APPEARANCE:
Mr. D V Gangal, Counsel for applicants.
Mr. V S Masurkar, Counsel for respondents.

ORAL JUDGMENT: DATED: 17-06-1992
(PER: S K Dhaon, Vice Chairman)

Disciplinary proceedings were initiated against the applicants. They were punished. They came to this Tribunal. This Tribunal took a view that the inquiry proceedings were vitiated as the Inquiry Report of the Inquiry Officer was not furnished to the applicant. This Tribunal, however, left it free to the department to continue with the inquiry from the stage of furnishing of the report of the Inquiry Officer.

An order has been passed on ~~6.3.1992~~ 9-1-1992 by the respondents purporting to suspend the petitioners from service in exercise of powers of sub-rule 4 of Rule 10 of CCS (CCA) Rules, 1965 (hereinafter referred as the Rules). This order is being challenged in the present application.

Undisputably, the applicants had not been placed under suspension at any stage during the course of disciplinary proceedings. A combined reading of sub-rules 3 and 4 of Rule 10 of the Rules indicate that the ~~evocation~~ situation contemplated ~~created~~ in sub-rule 4 can come into existance only if a delinquent had been placed under suspension ~~during the course~~, either before or during course, of disciplinary proceedings. That not being the position in the present cases the order of suspension is not sustainable.

Written statement has been filed on behalf of the respondents and we have heard the counsel for the respondents.

We are not inclined to go into other grievances raised in this application. We, however, make it clear that it ~~is~~ will be open ~~for~~ the applicants to raise the other

grievance, if possible under law, ~~as~~ and when a final order is passed by the disciplinary authority against the applicants.

The application succeeds and is allowed. The impugned order of suspension dated ~~6.3.1992~~ 9-1-1992 is quashed.

Correction done

(M Y PRIOLKAR)
M(A)

(S.K. DHAON)
V.C.

~~12-10-92~~

Mr. D V Gangal, Counsel for the applicant.
Mr. V S Masurkar, Counsel for the respondents.
M.P. No. 816/92 is for correcting certain typographical errors.

M.P. allowed. Necessary corrections implemented in our order dated 17.6.92.

(M Y Priolkar)
M(a)

(S K Dhaon)
V.C.

(5)

17/6/92

order/Judgement despatched to Applicant, Respondent (s) on 2.7.92

6/7/92

MP No. 816/92 for correcting clerical mistake, for Sis on 12/10/92

Yoli
12/10/92

Order/Judgement dt. 17/6/92 served on Applnt/Respt on 30/6/92

R.P.No 172/92
O.A.No. 445/92 Date: 19-10-1992

Mr.V.S.Masuarkar for Review Petitioner(Original respondent)

Mr.D.V.Gangal Review respondent (Original applicant)

Let notice be issued to the original applicant under RP A.D.

Adjourned to 21-12-1992

(M.Y.PRIOLKAR) M(A)

(S.K.DHAON) VC

R.P. No. 172/92 for orders by circulation, papers 15/10

Notice is issued to Applicant on 23.10.92

Notice dt. 23/10/92
Served on Applnt./Resp.
on N.S.L.....

18/11/1992

Rejd. reply to RP 172/92 from applicant on 17/12/92

17/12/1992

(6)

Original order in O.A.427/92.

OA Nos.427,428,429,430,431,432,433,434,435, 436,437,438,439,440,441,442,443,444,445,446, 447,747,750,751,777,775,776,813 and 762 of 1992.

Tribunal's order Dated : 21.12.92

Mr.V.S. Masurkar for the Review Petitioners (Original Respondents) and Mr.D.V. Gangal for the Review Respondents (Original Applicants).

All these Review Petitions are to be heard by the same Bench which had heard the Original Applications, namely, Hon'ble V.C. and Administrative Member Mr.Priolkar. It may be placed before the same Bench on 4.1.1993.

A copy of this order be kept in all the above mentioned cases.

Sd/-
(V.D. Deshmukh)
Member (J)

Sd/-
(M.Y. Priolkar)
Member (A).

R.Ps. in OA.Nos. 427/92 to 447/92 and OA.No. 742/92, 747/92, 750/92, 751/92 752/92, ~~757/92~~, 775/92, 776/92, 777/92.

Tribunal's Order Dated:4-1-93

Heard Mr. D.V.Gangal for the applicants and Mr. V.S.Masurkar for the respondents.

Orders reserved.

Sd/-
(M.Y.PRIOLKAR)
Member(A)

Sd/-
(S.K.DHAON)
Vice Chairman

(Original OA No. 427/92)

XLVII rule (1) of the Code of Civil Procedure (hereinafter referred to as the Code) provides, inter-alia, that any person considering himself agrrieved 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. Such a power is unhedged by the provisions of the Code. We are saying so not because of the Explanation

added to Section 141 of the Code,which makes the provisions of the Code inapplicable to proceedings under Article 226 of the Constitution, but even otherwise.

7. In Shivdeo Singh vs. State of Punjab (AIR 1963 SC 1909) 5 Hon'ble judges of the Supreme Court held that there is nothing in Article 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. Thus the Supreme Court by necessary implication negatived the attraction of the provisions of Order XLVII of the Code to the writ jurisdiction of the High Court. However, their Lordships clarified that inherent powers could be invoked "to prevent miscarriage of justice or to correct grave and palpable errors committed by the High Court." Their Lordships were dealing with a case where the High Court passed orders directly affecting some persons who were not made parties in the writ proceedings.

8. In A.T. Sharma vs. A.P.Sharma (AIR 1979 SC 1047), their Lordships clarified the ambit and scope of the powers of review in exercise of inherent powers. It was observed :

> "It is true there is nothing in Article 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 the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence, which after the exercise of 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 record is found; it may also be exercised on any analoguous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a 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 by the subordinate Court".

However, this Tribunal left it free to the Disciplinary Authority to reinitate 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

(7)

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: 25/1/93

(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.

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 be surely exercising appellate powers and not our inherent powers.

10. These applications are rejected.

dt 23.1.93

Order/Judgement despatched to Applicant/Respondent (s) on 2/2/93

(15)

414

CP No. 97/93
For order Fixed
on 16/8/93.

ajeli
26/7/93.

Received CPNo. 97/93
in OA 445/92
Issued
16/8

C.P.102/93 in OA 429/92, C.P.96/93 in OA 435/92, C.P.98/93 in OA 438/92, C.P. 94/93 in OA 440/92, C.P. 95/93 in OA 442/92 and C.P. 97/93 in OA 445/92.

Dated: 16.8.93

Shri D.V.Gangal, counsel for the applicant. Shri V.S. Masurkar, counsel for the respondents.

Shri Masurkar accepts notice on behalf of the alleged contemner. They may file the written reply within four weeks with an advance copy to the counsel for the applicant, who may file rejoinder within one week thereafter. List the cases for orders on C.P. on 20.7.93.

(Lakshmi Swaminathan)
Member(J)

(M.Y. Priolkar)
Member (A)

NS

(16)

C.P. in OA Nos. 429/92; 435/92; 438/92;
440/92; 442/92; 443/92 & 445/92

27/9/93

Mr. Gangal for the applicants.
Mr. Masurkar counsel for the respondents.
This contempt petition has been filed by the applicants for non-implementation of our judgment dated 17.6.92.
According to Mr. Masurkar and S.L.P. has been filed before the Hon. Supreme Court against the judgment but no stay has been granted.
We, therefore, direct the respondents to ~~to~~ implement the judgment within two months from to day unless in the meanwhile they obtain a stay from the Hon. Supreme Court.
With these directions the CP in all the above OAs disposed off.

Copy of this order be given to the parties.

RC/
AD
30/9

(Lakshmi Swaminathan)
M(J)

(M.Y. Priolkar)
M(A)

dd 27/9/93
order/Judgement despatched
to Applicant/Respondent (s)
on 6/10/93

12/10/93

Appeal against OA
Jt. dt. 17/6/92 & RA
Set aside the judgment
& allow the appeal.
by the Supreme Court's
order dt 15/11/93.

3/12/93
S/C desired keep
on file
7/12/93