

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1238/93

XXXXXX XXXXXXXX XXXXXXXX XXXXXXXX

DATE OF DECISION 11.2.1994

Shri G.A.Kadoo Petitioner

Shri M.D.Lonkar Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Sh.Ravi Shetty for Sh.R.K.Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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

1. ~~whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *M.*
3. ~~whether their Lordships wish to see the fair copy of the Judgement ?~~
4. ~~whether it needs to be circulated to other Benches of the Tribunal ?~~ *IV/0*

M.R.K.

(M.R.KOLHATKAR)
MEMBER (A)

M.S.D.

(M.S.DESHPANDE)
VICE CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

OA.NO. 1238/93

Shri Gulab Atmaram Kadoo
V/S.

... Applicant

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri M.D.Lonkar
Advocate
for the Applicant

Shri Ravi Shetty
for Shri R.K.Shetty
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 11.2.1994

(PER: M.S.Deshpande, Vice Chairman)

We heard the learned counsel. The only reason why the applicant is not being granted voluntary retirement is that an enquiry has been initiated against the applicant. The applicant's learned counsel states that he is willing to cooperate in the enquiry even after his retirement and in view of this statement, we direct the respondents to accept the application for voluntary retirement filed by the applicant subject to the enquiry which has already been initiated. The applicant undertakes to surrender the official quarter at the end of period of two months. The applicant's counsel states that his gratuity to the extent of Rs.1 lakh is still with the respondents and urges that a direction should also be made for giving him provisional pension. The respondents should fix the provisional pension but retain the gratuity till the conclusion of the enquiry. With this direction the application is disposed of.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

M.S.Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN

(1) (6)

NOTE

R.P.No: 135/94 in O.A. 1238/93

Date: 21.11.94

This is a review petition against order IN O.A.1238/93 dt. 11-2-94 by which the respondents were directed to accept the application for voluntary retirement filed by the applicant subject to the enquiry which has already been initiated. We had recorded the statement of the applicant's counsel that he would co-operate in the enquiry even after retirement and the undertaking to surrender the official quarter. The review application is made with a request to review the oral judgment and to dismiss the O.A. ^{and} if necessary rehear the part ~~ies~~ in view of the fact that the applicant did not co-operate with the enquiry nor did he vacate the quarters contrary to the assurance, that the applicant was found guilty ~~of~~ the charges levelled against him and the competent authority has imposed the penalty of reduction from the pay scale of Rs.950-1400. to the scale of Rs.800-1150 for a period of one year. It is further stated that reports about the involvement of applicant in defalcation of approximately Rs.5 lacs in the IAF Employees Co-operative Credit Society and loss of Govt. Stores valued at Rs.2,000/- have also been received.

2. Subsequent development~~s~~ cannot constitute a ground for review of our order. Breach of assurance given at the bar might afford~~not~~ a ground for contempt petition. However, there is problem of implementation of the orders of the Tribunal in the context of the penalty imposed on the applicant, because ~~the~~ acceptance of resignation was subject to enquiry. In the written statement it was pointed out by the respondents that non acceptance could be challenged only in terms of Rule 48-A of the CCS Pension Rules. The Relevant rules envisage that~~the~~ the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the

said period". The appointing authority had in fact refused grant of permission within three months because of the pending disciplinary proceedings and the difficulty in implementing the Tribunal's orders has arisen due to the intervention of the Tribunal.

3. This appears to be a fit case for issue of notice to both the parties for preliminary hearing to decide whether the order dated 11-2-94 is required to be reviewed.

N.R.Kothekar

Member(A)

21/11

To:

I agree.

Hon'ble V.C.

Notice

deliverable on 28/11/94

*Mr
V.C.*

*Mr
21/11*

DR

*Notice case issued to
Respondents on 28-11-94*

Mr

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. RP No. 135/94 & MP-1125/94

Transfer Application No. In OA. 1238/93.

Date of Decision 4.9.95

Gulab Atmaram Kadu

Petitioner/s

Shri M.D. Lonkar

Advocate for
the Petitioners

Versus

Shri Williams, Group Captain, Air Force Station,
Cotton Green, Bombay - 400 033.

Respondent/s

Shri R. K. Shetty

Advocate for
the Respondents

CORAM :

Hon'ble Shri. Justice M.S. Deshpande, Vice Chairman.

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 ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

abp.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNALBOMBAY BENCHREVIEW PETITION 135/94 & MP-1125/94IN O.A. 1238/93.

Gulab Atmaram Kadu

... Applicant

v/s.

Shri Williams,
 Group Captain,
 Air Force Station,
 Cotton Green,
 Bombay - 400 033.

... Respondents

CORAM: Hon'ble Shri Justice M.S.Deshpande, Vice Chairman.
 Hon'ble Shri M.R. Kolhatkar, Member (A).

APPEARANCE:

Shri M.E. Lonkar, Counsel
 for Applicant.

Shri R.K. Shetty, Counsel
 for Respondent.

ORDER ON REVIEW PETITION:DATED : 4-9-95

I Per Shri M.R. Kolhatkar, Member (A) X

In this Review Petition, the review petitioner/ original respondents has sought review of our judgement dated 11/2/94. By this judgement, we had directed the respondents to accept the application for Voluntary Retirement by the applicant subject to the enquiry which has already been initiated. The applicant had undertaken to surrender the official quarter and the respondents were directed to fix the provisional pension but were given the liberty to withhold the gratuity till the conclusion of the enquiry.

2. In the RP, the following grounds have been urged for review of our order:-

1. Applicant failed to cooperate with the enquiry.
2. The enquiry has since been concluded and on the basis of the findings and the report of the Enquiry Officer, the Competent Authority has imposed the following penalty on the original applicant.

"the Grade and pay be reduced from LHF in

the pay scale of 950-20-1150-EB-25-1400 to Fireman Grade II in the pay scale of 800-15-1010-EB-20-1150 for a period of one year with immediate effect - Officer should not be paid increment during the period of reduction and on expiry of the period, the reduction will not have the effect of postponing the future increment of pay."

According to the petitioner, the Tribunal did not know as to what would be the result of the enquiry and what punishment would be imposed. The respondents cannot under these circumstances, allow the applicant to retire voluntarily.

According to the petitioner, this is an error of fact and law on the face of the record.

3. Applicant has not vacated the accomodation inspite of the assurance to that effect.
4. The original respondents have since received an incriminating Audit Report in respect of IAF Employees Co-operative Credit Society, involving the original applicant in defalcation of approximately Rs.5 lacs., and that this information about the conduct of the applicant was not available to the original respondents when the Tribunal delivered the judgement. This is also stated to be an error apparent on the face of the record.
5. Petitioners have received a report about loss of Govt. stores valued at Rs.2,000/- approximately for which the original applicant is found to be responsible.
3. The judgement was delivered on 11/2/94, however, this RP has been filed on 22/8/94. MP No.1125/94 has been filed for condonation of delay. Delay in filing the RP condoned, MP disposed of.
4. In view of various points raised in the RP, it was decided to dispose of the RP through a preliminary

hearing. Accordingly, the original applicant had been noticed and he has filed an affidavit in reply to the RP. We have heard the parties.

5. In his reply, the original applicant has stated that the review petitioners were aware of the Tribunal's judgement dt. 11/2/95 even prior to starting the Disciplinary Enquiry which was initially fixed on 28/3/94, despite that, the enquiry was concluded and penalty was awarded to the applicant and this could not be a ground for review. The original applicant contends that voluntary retirement was sought by the applicant on the ground of ill health. His request dated 1/5/93 was rejected on 24/6/93 and the second request dated 29/7/93 was rejected by the letter dated 15/10/93. According to him, the respondents had received five applications for voluntary retirement and four of them were approved but the original applicant was singled out for rejection, emphasizing the aspect of discrimination. Regarding non vacation of quarters, original applicant has stated that he had vacated the quarters in November, 1993 itself. Regarding his involvement in the alleged defalcation in the IAF Employees Co-operative Credit Society, the original applicant has enclosed Annexure-L from the Assistant Registrar/stating there is no complaint in respect of the original applicant pending in their office. The Applicant has also filed a statement from the private employer that he is not in their employment although this was one of the grounds against him in the enquiry.

6. We have considered the submissions and documents of both the parties. We observe that the scope of the review of a judgement is OA limited. The review petitioners have not been able to specify or establish what was the error apparent on the face of the record of our judgement. We had directed the respondents to

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accept the application for voluntary retirement subject to the enquiry. In this connection, our contention was invited to the Written Statement of the original respondents in para-1 of which the original respondents have stated

"The Respondents now submit that in case the applicant applies for voluntary retirement under Rule 48 of the CCS (Pension) Rules, they are ready and willing to allow the applicant to retire as per rules but after completing disciplinary action. In view of these submissions, the respondents submit that the demand of the applicant does not survive and his application can be dismissed ^{in limine}."

Evidently, this related to the enquiry against the original applicant for which the charge memo was issued on 29/12/93 and which has been since concluded. Respondents are not precluded from giving effect to the penalty subject to our judgement.

7. ^{as contained} So far as any subsequent facts/which have come to the notice of the original respondents regarding alleged defalcation in the Credit Society and the alleged shortage of stores for which they held the original applicant to be responsible, these relate to a period subsequent to our judgement and therefore do not constitute the ground for review of our judgement.

We therefore consider the RP to be without merit and dismiss the same. There will be no orders as to cost.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)

M.S.Deshpande
(M. S. DESHPANDE)
VICE-CHAIRMAN

abp.