

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.32/2000
IN
ORIGINAL APPLICATION NO.1284/93

Tuesday this the 4th day of July, 2000.

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

V.M.Gaikwad,
B.A.R.C. Staff Colony,
VII, 7/6 Palghar District,
Thane.

...Applicant.

Vs.

Union of India & Ors.

...Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION :

(SHRI JUSTICE R.G.VAIDYANATHA, VICE-CHAIRMAN)

This is a Review Petition seeking review of our Judgment dt. 13.4.2000 in O.A. No. 1284/93. We have perused the contents of the Review Petition and the entire case papers.

2. The applicant filed the OA challenging the punishment of removal from service imposed on him on the basis of disciplinary enquiry. The applicant had taken number of grounds in the application for challenging the disciplinary action.

3. Our order dt. 13.4.2000 shows that applicant's counsel Mr.C.B.Kale raised number of points and all of them were considered one by one and rejected. Now, the applicant has filed a Review Petition, almost reiterating the same grounds once again.

It is well settled that the provision for review cannot be used seeking a re-hearing of the case. The scope of review

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jurisdiction is very limited. It is only if there is an apparent error on record or discovery of new material or some sufficient reason Courts can grant review. But, here same grounds are reiterated in detail which we have already considered and rejected in our order. No apparent error on record has been brought out in the Review Petition. No discovery of new material or evidence has been brought out. Therefore, we find that the applicant's review petition is nothing but an attempt to have a re-hearing of the Review Petition, which cannot be permitted within the scope of Order 47 CPC.

4. The applicant has referred to some authorities along with the Review Petition. Though it is not necessary to consider those decisions at this stage, we briefly refer to them to show that none of them are applicable to the facts of the present case.

In the case of A.Gabriel Vs. Security Officer, R.P.F. (1986 (1) (CAT) 159), the order was set aside on the ground that the delinquent official was not allowed to examine Defence Witnesses after the prosecution evidence. In our view, this decision has no bearing on the facts of the present case, since applicant had examined three Defence Witnesses on his behalf.

In Bhagat Ram Vs. State of Himachal Pradesh and Ors. (1983 (2) SLJ 323), the Supreme Court quashed the enquiry proceedings on the ground that the delinquent official was not informed about his right to be represented by another government official. In our view, this decision has also no bearing on the facts of the present case. In the present case, the applicant has been informed of his right to engage a Defence Assistant and he did engage a Defence Assistant on his behalf, who had appeared

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before the Enquiry Officer and cross-examined some witnesses. We have considered this point in detail and rejected applicant's version. Therefore, this is not a case where the delinquent official was not informed about his right to engage a Defence Assistant, but on the other hand, the applicant had engaged a defence assistant and therefore, the said decision is not applicable.

The next case relied on is Radhe Shyam Pande Vs. UOI & Ors. (1987 (2) SLJ (CAT) 1), where one of the points held is that if a request for change of Enquiry Officer is made on the ground that the delinquent official will not get justice, then the Enquiry Officer should be changed, this view is taken on the peculiar facts of that case. In the present case, we have already considered this argument of applicant's counsel and rejected on the peculiar facts and circumstances of the case on hand.

The last decision relied on is Yashpal Laxmandas Midha Vs. The Director General of Ordnance Factories (1987 (1) ATR 298). What is pointed out by a Division Bench of this Tribunal is that the Appellate Authority should pass a speaking order and in view of that finding, the order was set aside and the matter was remanded to the Appellate Authority to pass a speaking order. In the present case, such a contention was raised and on the basis of the facts of the present case, we have rejected it in our order particularly in para 16 of our order. We have pointed out that the Appellate Authority has applied his mind to the facts of the case and has given a brief reasoning as to why he is dismissing the appeal. Therefore, the said matter cannot be now again raised in the Review Petition and if granted, it will amount to re-hearing of the matter.



5. Another point which is mentioned in the Review Petition and which was not argued at the time of arguments is that the applicant should have been examined by the Enquiry Officer after the close of the Prosecution case in respect of incriminating evidence against him and since this is not done, the enquiry is vitiated. ~~That~~ It is not necessary to consider such a new argument in the Review Petition when it was not argued at the time of arguments. We only mention that a reply to this contention is found in the Judgment of the Supreme Court in Sunith Kumar's case (1980 (3) SCC 304), where the Apex Court has held that non-examination of delinquent officer after the close of Prosecution evidence is not fatal unless prejudice is established. Therefore, it is purely a question of fact whether due to non-examination of applicant any prejudice is caused or not. It cannot be raised or argued by filing a Review Petition. Even now, except stating that the applicant was not examined, no material is placed to show as to how and what prejudice is caused to the applicant. It is all the more necessary since applicant has entered on his defence and examined three Defence witnesses. Hence, we find no merit even in this last contention.

6. In the result, the Review Petition is rejected by this Order on circulation.

B.N. Bahadur

(B.N. BAHADUR)
MEMBER(A)

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE-CHAIRMAN

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dt. 4/7/00
order/Judgement despatched
to Applicant/Respondent (s)
on 19/7/00
21/7/00