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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

R.P.No.7 of 1994

Date of order: 8 | 3 | 19 94

in CP 38/93

in MA 674/92

in OA 37/91

Between

M.A.K.Jilani

.. Applicant

and

P.Rajagopal Naidu
Divisional Mechanical Engineer (Loco)
South Central Railway
VIJAYAWADA

.. Respondent

Counsel for the Applicant

:: Sri GV Subba Rao

Counsel for the Respondents

:: Sri NR Devraj,
Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHY, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

O R D E R

(By Circulation)

{As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J)}

This Review Petition is filed by the applicant herein under Rule 17 of the Central Administrative Tribunal (Procedures) Rules, 1987 to review our order dated 11.11.93 passed in CP No.38/93. After going through the grounds raised in this Rp, we ~~xxx~~ proceed to decide this RP by circulation in terms of Rule 17(iii) of CAT (Procedure Rules, 1987.

2. Facts giving rise to this RP in brief, may be stated as follows:

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3. MA 674/92 in OA 37/91 ~~which~~ was filed by the petitioner herein for a direction to the respondents therein to pay 75% of the pay as subsistence allowance. The said MA 674/92 was disposed of on 3.8.1992 as under:

".....Since we had seen from the records that no reasons had been recorded by the competent authority to deny enhancement of the subsistence allowance, we direct the respondents to compute the subsistence allowance due to the applicant in accordance with the rules and pay the different, if any, to the applicant....."
....."

In compliance of the above order, the respondents had ^{pay as} paid only 50% of subsistence allowance to the applicant. It is the case of the applicant that he is entitled for subsistence allowance at the rate of 75% for the deemed suspension period. Alleging that the respondents violated the orders dated 3.8.92 passed in MA 674/92, CP 38/93 was filed by the Review Petitioner. After hearing both sides, CP 38/93 was also dismissed as per orders dated 11.11.93. The review petitioner herein is the applicant in CP 38/93. The present RP is filed to review the said order dated 11.11.93 passed in CP 38/93.

4. We have perused the entire material before us. In our order dated 11.11.93, we had clearly held that the employee deemed to be under suspension has to be paid only 50% subsistence allowance for the deemed suspension period.

In coming to the above conclusion, we had relied on a Supreme Court decision and also Rule 1342 of Indian Railway Establishment Code Vol.II. We had explained under Rule 1342 also, the review petitioner herein cannot have subsistence allowance more than 50% of pay for the deemed suspension period. The very same contentions that were raised in the CP, have been raised again by the review petitioner in this RP also.

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As we have sufficiently answered the said contentions in the CP itself, there is no need to repeat what we have said in our order dated 11.11.93 passed in CP 38/93.

5. It is also urged that ~~the~~ the enquiry has got to be conducted from the stage of supplying a copy of enquiry report and that, the respondents are not following the same and they are acting contra to the directions in the Judgement dated 19.2.91 passed in OA 37/91 by this Bench. This aspect also, we have considered in our ^{order} Judgement dated 11.11.93 passed in CP 38/93 and we had clearly pointed out that the respondents have not committed any contempt by conducting ~~de-novo~~ de-novo enquiry when the direction of this Tribunal was only to continue ^{the} ~~de-novo~~ enquiry from the stage of supplying copy of the inquiry report to the delinquent official.

The relevant paras are extracted hereunder:

"One more contention that is urged is that the respondents have committed a contempt by conducting de-novo inquiry when the direction of this Tribunal was only to continue the enquiry from the stage of the supply of the enquiry report. The applicant in this CA had pleaded in OA 37/91 that he had been denied reasonable opportunity to defend the case since the enquiry was conducted ex parte. So, in all fairness to give opportunity to the applicant, the respondents seem to have taken steps. On one hand, the contempt Petitioner complains that enquiry had been held ex parte. But when the respondents have taken steps to give an opportunity to the applicant, the contempt petitioner complains that the order of this Tribunal is being violated. It is not open for the contempt petitioner to blow hot and cold. On one hand, the contempt petitioner points out a defect in the enquiry and when the said defect is sought to be rectified, contempt petitioner complains that there is contempt in implementing the orders of this Tribunal.

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14. It is needless to point out ~~that~~ to take action under the contempt of Courts Act, there must be wilful disobedience of the orders of this Tribunal. As could be seen from the counter of the respondents from para 2 at Page 7, the respondents only seem to be anxious to give a fair opportunity to the applicant in accordance with law in participation of the inquiry. The action of the respondents in giving fair opportunity to the applicant to participate in the inquiry cannot be said to be in any way prejudicial to the applicant. As a matter of fact, the opportunity, which the respondents want to provide to the applicant very much protects the interests of the applicant. We see no contempt having been committed ~~to~~ taking steps to provide reasonable opportunity to the applicant in accordance with law to participate in the inquiry. So, we see no merits to this CP and hence, this CP is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs."

So, in view of the findings in the CP as extracted above, it is not open for the applicant to raise the very same contention and try to ~~reopen~~ reopen the matter. We see no error at all apparent in our order dated 11.11.93 passed in CP 38/93. In this context, we may point out a decision reported in AIR 1979 SC 1047 Arbham Tuleswar Sharma Appellant Vs Arbham Pishak Sharma and others respondents wherein it is laid down as follows:

"It is true there is nothing in Art.226 of the Constitution to preclude the High Court from exercising the power of review which inheres every court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or 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 ^{also} 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 sub-ordinate Court."

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The above decision applies on all fours to the facts of this case.

6. It is in an order passed in the CP that review is sought. We have not gone into the question, whether it is open to seek review in order passed in the CP. If the Review Petitioner is aggrieved by our orders dated 11.11.93 passed in CP 38/93, the remedy of the review petitioner lies before the Hon'ble Supreme Court.

7. In the result, we see no merits in this RP and hence this RP is dismissed.

T. Chandrasekhara Reddy
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

A.B. GORTHY
(A.B. GORTHY)
Member(Admn)

Dated: 8 March '94

mvl

Deputy Registrar (CC)

To

1. Sri P.Rajagopal Naidu,
Divisional Mechanical Engineer(Loco)
S.C.Rly, Vijayawada.
2. One copy to Mr.G.v.Subba Rao, Advocate, CAT.Hyd.
3. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
4. One copy to Library, CAT.Hyd.
5. One spare copy.

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHIL : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER
(ADMN)

Dated: 8-3-1994.

~~ORDER/JUDGMENT.~~

M.A./R.A/G.A. No. 7/94 in CP 38/93
and 674/92

O.A.No.

T.A.No.

37/91

(W.P.No.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

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