

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

R.P. No. 39/94

Dt. of order: 8.8.1994

Vijay Harishchandra Kapil : Applicant/petitioner

vs.

Union of India & Ors. : Respondents

Mr. V.S. Sharma : Counsel for applicant

Mr. Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Judl.)

Hon'ble Mr. O.P. Sharma, Member (Adm.)

PER HON'BLE MR. GOPAL KRISHNA, MEMBER (JUDL.).

In this petition under Rule 17 of the ^{Central} Administrative Tribunal (Procedure) Rules, 1987, the petitioner has sought a review of the decision rendered by us on 22.4.94 in O.A. No. 75/91.

2. We have heard the learned counsel for the parties. The review of the decision has been sought on several grounds. Firstly that the matter was heard and decided in the absence of the petitioner or his counsel. Secondly, the provisions contained in the Civil Procedure Code in regard to a review of the orders and decisions made by this Tribunal are not applicable and lastly that the entire record of the disciplinary proceedings was not made ~~available~~ to the Tribunal for its perusal before passing the impugned order. The learned counsel for the petitioner urged that the non-consideration of the record of the disciplinary proceedings is tantamount to an error apparent on the face of the record and as such the decision rendered in the O.A. referred to above ~~has~~ to be reviewed. No other point was raised on behalf of the applicant during the course of arguments. The learned counsel for the petitioner has relied on (1993) 4 SCC 48 Union of India & Anr. Vs. Ashwani Kumar, 1991 Supp. (2) SCC 421 H.C. Puttaswamy & Ors. Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors. and AIR 1981 SC 606 Grindlays Bank Vs. Central Govt. Industrial Tribunal. It has been laid down in AIR 1981 SC (supra) at page 610 as follows:

"The expression 'review' is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

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Relying on 1991 Supp.(2) SCY(supra), the learned counsel for the petitioner urged that humanitarian considerations must be made in the present case since the petitioner was dismissed from service. It should be borne in mind that the Hon'ble Supreme Court while deciding the case of H.C.Puttaswamy & Ors (supra) had referred to the provisions contained in Article 137 of the Constitution and had allowed the appeals preferred by the petitioners. However, this Tribunal has to work within the frame-work of the provisions contained in the Administrative Tribunals Act, 1985 and the rules made thereunder. The relevant portion of Sec.

22(3) reads as follows:

"(3) A Tribunal shall have, for the purposes of (discharging its functions under this Act), the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,

- (a) xxx
- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx
- (f) reviewing its decisions;
- (g) xxx
- (h) xxx
- (i) xxx "

Adverting to the plea of humanitarian considerations raised by the petitioner, it is pertinent to note that the charge against the petitioner was of misappropriation of government funds. Such considerations cannot therefore be applied in a case of this nature. The Tribunal while deciding the matter had carefully considered and examined all the documents which were placed by the petitioner on record. It had also examined the pleas raised by the petitioner in the O.A. and it was not considered necessary to call for any other record to adjudicate upon the points raised. The applicant or his counsel was not present when the matter was heard and decided on 22.3.94. The applicant on his part had not cared even to file a copy of the memorandum

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of charges alongwith the O.A. It is a case of complete negligence, much less due diligence. The other grounds stated in the review petition do not fall within the ambit of the provisions contained in Order 47 Rule 1 of the CPC. We do not find any error apparent on the face of the record. No new matter as referred to in Order 47 Rule 1 has been brought forth~~xxix~~ by the petitioner. There are no other grounds justifying a review of the order in question. The power of review may not be exercised on the ground that the decision was erroneous on merits.

3. In view of the above discussion, the petition for review is dismissed with no order as to costs.

(O.P.Sharma)
Member (A).

G.K.K.
(Gopal Krishna)
Member (J).