

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

P.A.No.88/94 (G.A.689/93) Dt. of order: 5-4-95,

Mool Narain Sharma : Applicant

Vs.

Union of India & Ors. : Respondents

Applicant present in person.

Mr. Manish Bhandari : Counsel for applicant

CORAM:

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

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

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADM.).

This is a Review application filed by Shri Mool Narain Sharma in O.A.No.689/93 in which he has sought a review of the order dated 20.9.94 passed by the Tribunal in M.A.No.325/94 filed in O.A.No.689/93. The review sought is specifically in respect of the observation of the Tribunal that O.A.No.689/93 has already been disposed of. The applicant's case is that the said O.A. is still pending and it should be heard on merits.

2. While taking a decision on this review application it is necessary to explain briefly the background of the case. The applicant had earlier filed an O.A.No.247/93 before this Bench of the Tribunal seeking directions to the effect that the charge sheet issued to the applicant and the departmental action being taken against him may be quashed. One of the grounds for seeking this direction was that there was considerable delay in initiating departmental action and finalising the disciplinary enquiry against the applicant. The Tribunal disposed of the said O.A. by order dated 27.4.93, wherein the respondents were directed to finalise the disciplinary proceedings within a period of 6 months. The applicant was given liberty to file a fresh application if any adverse order is passed against him. Thereafter, the applicant filed another O.A. No.689/93 wherein also he prayed that the departmental action initiated against him by issue of the charge sheet which was also the basis of the departmental action taken in O.A. No.247/93, may be quashed. There were also

certain other prayers in the said O.A. such as that the adverse remarks against the applicant in the matter of promotion may be withdrawn and that he may be granted promotion from the same date from which his juniors have been promoted. This application came up before the Tribunal on 13.12.93. The Tribunal in an order dated 13.12.93, on which date the application came up before it for the first time, noted that the order dated 27.4.93 for completion of enquiry within 6 months (which had been passed in O.A.No.247/93) had been perused. The Tribunal directed that the O.A. may be kept pending and notices of contempt may be issued to the Presenting Officer and the Inquiry Officer. Thereafter the matter came up before the Tribunal from time to time. It is obvious that the Tribunal had initiated contempt proceedings against the respondents although no specific application for contempt had been filed by the applicant. On 19.4.94, the Tribunal passed an order stating that disciplinary proceedings were being taken against the applicant, the applicant had remained absent 3 times and an adjournment had been granted on his request. In the light of these submissions made before the Tribunal, when on behalf none of the applicant was present, the Tribunal decided not to take it as a case of contempt and discharge the contempt notices. However, a further direction was given in the said order to complete the enquiry at the earliest as directed in the earlier order (apparently in O.A No.247/93). A further direction was given in this order that no adjournment should be granted to any of the parties without any reasonable cause. In this order, there was no mention that this constitutes disposal of O.A. No.689/93. In the title it is mentioned that this order is in respect of "C.P. No. /94 in O.A No.689/93" However, in the order sheet dt.19.4.94, it is stated that the O.A. has been disposed of by a separate order which has been pronounced in the open court. Thus, as per the order ~~sheet~~ it ~~entry in the separate order sheet~~ dated 19.4.94, constitutes disposal of the C.P./contempt proceedings which were initiated by the Tribunal suo motu after filing of O.A.No.689/93, but the order sheet entry states ~~that~~ that this order disposes of O.A.No.689/93.

Thereafter, the applicant filed an M.A. No.325/94, wherein he submitted that the O.A.No:689/93 should be treated as pending. This M.A. was rejected by order dated 20.9.94 by the Tribunal, when the applicant was present in person, on the submission made by the counsel for the respondents that the M.A. is not maintainable, <sup>because the O.A has already been disposed of.</sup> However, the Tribunal directed that this M.A. should be treated as a C.P. and notices be issued to the respondents why they should not be punished. The Tribunal further directed that in case the enquiry is completed before the next date the respondents Nos.2 and 3 need not appear in person, otherwise they should appear in person on the next date.

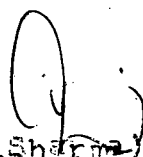
3. In the above background, the applicant in the present Review Application, has stated that in O.A. No.689/93, the Tribunal had passed order dated 13.12.93 that the applicant's O.A. may be kept pending and contempt notices may be issued against the Inquiry Officer and the Presenting Officer. Further, O.A.No.689/93 is not based only on the ground of delay in finalisation of the enquiry but it is based on many other grounds. The contempt matter was heard by the Tribunal on 19.4.94 (Annx.A1). On that date the applicant could not attend. However, the Tribunal directed the respondents to complete the enquiry at the earliest possible as directed in the earlier order dated 27.4.93 in O.A. No.247/93 filed by the applicant. On 15.7.94, the applicant submitted an M.A. ~~request~~ for early hearing of O.A.No.689/93. When the M.A. was heard by the Tribunal, the counsel for the respondents submitted that the M.A. is not maintainable as the O.A. has already been disposed of. Agreeing with the counsel for the respondents, the Tribunal passed order dated 20.9.94 (Annx.A2) holding that the said O.A. is not pending. However, according to the applicant, in the order dated 19.4.94 (Annx.A1) no direction was given that O.A.No.689/93 had been disposed of nor had any such direction been communicated to the applicant. The applicant was surprised how the counsel for the respondents had urged before the Tribunal that O.A.No.689/93 had been disposed of. The various grounds urged in O.A.No.689/93 included delay in finalisation of the departmental action, delay

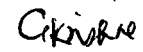
in finalisation of the departmental enquiry, nonapplication of mind by the Disciplinary authority in framing the charge sheet, non-supply of material documents, etc. etc. Further, according to the applicant, the Inquiry Officer is proceeding with the enquiry by not even observing the statutory rules in order that respondents Nos.2 & 3 may state before the Tribunal that the enquiry has been completed. The applicant has concluded that since the order in the M.A. was passed on 20.9.94 and the applicant got a certified copy on 29.9.94, this Review Application is within the limitation period, having been filed on 21.10.94. The respondents in their reply to the review application have stated that it is an after thought on the part of the applicant to state that O.A.No.689/93 was not disposed of when it was treated as a Contempt Petition and disposed of by the Tribunal. If the applicant had any grievance in this regard then at least before passing of the order Annex.A2 by which the M.A. <sup>was</sup> disposed of on 20.9.94, he should have raised objection at that time but no such objection was raised. Further, according to the respondents the Inquiry Officer has conducted the enquiry after giving a full opportunity to the applicant and if the applicant is aggrieved by the action of the respondents, he can take suitable action after availing himself of the alternative remedy.

4. During the arguments, the learned counsel for the respondents stated that since the applicant participated in the contempt proceedings initiated on his filing of O.A.No.689/93, he is now estopped from challenging such proceedings. He added that the order dated 19.4.94 (Annex.A1) is not under review, by which O.A.No.689/93 was disposed of. If however, this order is the subject matter of the application for review, the application is time barred. The review application has been preferred in the O.A. and not in the M.A. but the O.A. has already been disposed of by order dated 19.4.94 and therefore, no review lies in such circumstances. At the time when the M.A. was disposed of by order dated 20.9.94 in the presence of the applicant, he did not take objection to the statement of the counsel for the respondents that the O.A.

has already been disposed of, therefore, the order dated 20.9.94 (Annx.A2) passed in M.A. No.325/94 cannot be reviewed at this stage.

6. We have heard the learned counsel for the parties and have perused the records. Basically, the applicant has sought review of the observation of the Tribunal in order dated 20.9.94 (Annx.A2) that O.A. No.689/93 has already been disposed of. We have now to see how far it would be correct to say that the said O.A. had already been disposed of on 20.9.94. In the order dated 13.12.93 passed by the Tribunal when contempt proceedings were ordered to be initiated it was specifically stated that the O.A. may be kept pending. In the order dated 19.4.94 (Annx.A1) it is stated that the Contempt notices ~~are~~ are discharged. In this order, there is no mention that <sup>the O.A.</sup> in which contempt petition proceedings were initiated stands disposed of. In the order sheet dated 19.4.94 however, it is recorded that the O.A. has been disposed of by a separate order which has been pronounced in the open court. However what the applicant got was only a copy of the order dated 19.1.94 (Annx.A1) and not the copy of the order sheet dated 19.4.94. Thus, it could reasonably <sup>be</sup> assumed that the applicant was unaware that the order Annx.A1 dated 19.4.94 was in disposal of O.A.No.689/93. The Tribunal had itself specifically stated when on the first occasion the matter came up before it on 13.12.93, that the O.A. No.689/93 is kept pending and contempt proceedings may be initiated against the respondents. There is nothing else on the record to show that the O.A. No.689/93 has been disposed of. This O.A. is, therefore, in our view, ~~is~~ still pending and is required to be disposed of. Accordingly, the Review Application is allowed. The Registry is, directed to list O.A.No.689/93 for admission on an appropriate date.

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

  
(Gopal Krishna)  
Member (J).