

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

RA 4/2004 with MA 55/2004
(in OA No. 307/2003)

DATE OF ORDER: 20-2-2004

Dr. M.K. Srivastava son of Late Shri. Pratap Narayan Srivastava
resident of 1-B, Anant Kuti, Kabir Marg, Bani Park, Jaipur.

Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.

2. Director General of Health Services, Nirman Bhawan, New Delhi.

3. Pay & Accounts Officer Pay & Accounts Office, M/s Health & Family Welfare, NICD, 22 Sham Nath Marg, New Delhi.

Respondents

CORAM:

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

This Review Application has been filed on behalf of Union of India & Others u/s 22(3)(f) of the Administrative Tribunal's Act, 1935 for review of the order dated 19.12.2003 wherein the following direction was given:-

"19. In the result the Original Application merits acceptance and the same stands allowed in the following terms:-

(i) The respondents are directed to treat the period of suspension from 27.11.2000 to 03.09.2001 as spent on duty for all purposes including pay & allowances.

(ii) The applicant shall be entitled for payment of all retiral dues, including final pension, DCRG, GPF etc. on the date of his retirement but the commutation of pension, if any, from the actual date of payment of commuted value. The respondents shall also pay interest on the amount delayed payment @ 8% p.a. from the date of retirement till the date of payment except on the pension amount for the period from July 2002 to Sept. 2003.



(iii) The amount of Rs. 1,20,616/- withheld on account of overdrawn of salary shall be released within a period of one month from the date of receipt of this order.

(iv) The other dues listed at item No. 1 to 10 in Para above, the applicant shall submit the details/explanation and complete the requisite formalities and submit a representation accordingly to respondent No. 2, within a period of one month from the date of receipt of this order, who shall decide the same by passing a speaking order within a period of two months thereafter. The applicant would be at liberty to file a fresh OA if he still aggrieved by the such order, if so advised.

(v) The parties shall bear their own costs."

2. The Review comes up by circulation. Alongwith the Review Application, one MA No. 55/2004 has been filed for condonation of delay in filing the Review Application. There is a very small delay of about one day in filing of the Review Application. From the perusal of the grounds mentioned in this MA, we are satisfied that sufficient grounds have been made out for condoning the delay in filing of the Review Application. We hereby condoned the same and accept the MA. It accordingly stand disposed of.

3. Before adverting to the merit of the Review Application, we are constrained to observe that as per the Cause-Title of the Review Application, Dr. M.K. Srivastava, the original petitioner has been shown as applicant and the Union of India & Others, they have been shown as respondents but the Review Application has been filed on behalf of the Union of India & Others, who are in fact the applicants in this Review Application since it is they who have filed the Review Application and not Dr. M.K. Srivastava. Thus due procedure has not been followed. The Registry has also not taken care of ^{same} and such mistakes are likely to give rise to unwarranted implications. This time we are leaving the matter with a note of caution but it is expected that the same would not be repeated in future.

4. The factual aspect as brought out in this Review Application is that the applicant was suspended on the basis of the Audit Report and preliminary inquiry. The allegations against him

were of serious nature but after retirement, it was thought proper that a lenient view should be taken in his case and that should mean that suspension of the applicant was wholly unjustified. The Tribunal did not notice that no fundamental rule provides that it is mandatory for the Disciplinary Authority to initiate the disciplinary proceedings against the delinquent Govt. Servant, who has been suspended for any reason. FR 54(B) Rule was ignored and it provides that it is the discretion of the competent authority to make an order regarding pay & allowances to be paid to the Govt. Servant for the period of suspension and to pass an order whether or not the said period of suspension shall be treated as on duty or not. The applicant is said to be in-cooperative from the beginning and he did not submit explanation to the Memo. It has been averred that the applicant ^{in OA} would be entitled to pay interest only on delayed payment of retiral benefits when the delay is attributable on their part, which is not the instant case. The power of Review has been narrated in other paras and it has been prayed that the direction regarding payment of interest as well as treating the period of suspension as duty requires reconsideration.

5. As far as the law position is concerned regarding the review, Section 22(3) of the Administrative Tribunal Act, 1985 confers on an Administrative Tribunal discharging its functions under the Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect inter alia, of reviewing its decisions. Section 22(3)(f) is as follows:-

"Section 22(3)(f)

A Tribunal shall have, for the purpose 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) to (e)
- (f) reviewing its decisions;
- (g) to (i)

A Civil Court's power to review its won decisions under the Code of Civil Procedure is contained in Order 47 Rule 1.



6. The powers of review, which is granted, to an Administrative Tribunal is similar to power given to a Civil Court under Order 47 Rule 1 of the Code of Civil Procedure. Therefore, any person (inter alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1(1)(a). This position is settled by the Apex Court in case of Gopabandhu Biswal vs. Krishna Chandra Mohanty & Others (1998 SCC (L) & S) 1147)

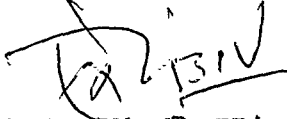
7. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, the Supreme Court in the case Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma, AIR 1979 SC 1047 has held as under:

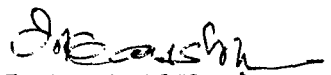
"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of 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 be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not 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 subordinate court."

Ln

8. The respondents have not even whispered any word relating to the grounds of the review e.g. there is no 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; nor some mistake or error apparent on the face of the record is found in the order. It would be pertinent of notice that unchecked review has never been the rule. We find that proper grounds do not support this Review Petition and the same is not maintainable as such. Thus no interference is called for from this Bench of the Tribunal.

9. In view of what has been said and discussed above, this Review Application sans merit and the same stands rejected accordingly by circulation.


(A.K. BHANDARI)
MEMBER (A)


(J.K. KAUSHIK)
MEMBER (J)

AHQ