

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 11/7/2001

RA 5/2001
(OA 90/1996)

1. Union of India through Secretary, Ministry of Finance, Government of India, New Delhi.
2. Commissioner, Central Excise & Customs, New Central Revenue Building, Statue Circle, Jaipur.

.... Review Petitioners

Versus

1. Shri Sudesh Pal son of Shri Prakash aged about 50 years, resident of C-37 A, Ramdatt Enclave, Uttam Nagar, New Delhi, Fitter, O/o Telecommunication Wing, Customs & Central Excise, Statue Circle, Jaipur.

... Non-Petitioner

Mr. R.G. Choudhary, Counsel for the Review Petitioners
Mr. P.P. Mathur, Counsel for the Non-Petitioner.

CORAM

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE))

This Review Petition has been filed u/s 22 (3) (f) of the Administrative Tribunal's Act, 1985 seeking review of the order of this Tribunal dated 16.1.2001 passed in OA No. 90/1996 titled Sudesh Pal Vs. Union of India & Others.



.....2/-

2. I have perused averments made in this Review Petition and have also perused the order dated 16.1.2001. The operative part of the order is reproduced as under:-

"In view of the facts as above, this OA is allowed. The respondents are directed to consider the request of the applicant for voluntary retirement for acceptance after taking into account all the leave due at his credit. The applicant is entitled to all consequential benefits. No order as to costs."

3. The main contention of the applicants in this Review Petition is that the direction, on the given facts, cannot possibly be implemented since the non-petitioner i.e. the applicant in the OA had already been dismissed from service by order dated 30.7.99 much before the date of the Tribunal's order in the OA and that he has also filed an appeal against the order of dismissal before the Appellate Authority and also requested for personal hearing. On his request, two notices dated 12.10.2000 and 4.12.2000 were also issued to him, service of which could not be effected. It is admitted by the applicant that this fact could not be brought to the notice of the Tribunal despite exercise of due diligence and on account of which order dated 16.1.2001 came to be passed. The applicants (respondents in OA) have made a prayer that in view of these facts, the Tribunal may hear and decide the OA afresh after taking on record Annexures RA-2 to RA-4 attached with this Review Petition and pass such orders as may be deemed proper in the facts and circumstances of this case.

4. Notices of this Review Petition was sent to the Opposite party i.e. applicant in the OA who has filed a reply to the averments made by the applicants in the RA. The main ground taken in the reply is that respondents in OA have committed serious illegality by violating the provisions of Section 19 of the Administrative Tribunal's Act, 1985 in as much as this case had already been admitted by the Tribunal and the respondents, in view of the provisions of Section 19, could not have proceeded with the disciplinary proceedings. It is also stated that respondent Department is seeking to enhance the scope of Review Petition which is not permissible.



It is admitted by the applicant that the order of dismissal has been passed by the Department in the year 1999.

5. Heard the learned counsel for the parties. The learned counsel for non-petitioner in the RA submitted that he had nothing to add to what has already been stated in the written reply filed on behalf of the applicant in OA. The learned counsel for the petitioner also stated that he has nothing to say further, what has already been stated in the Review Petition.

6. The Tribunal derives its power from Section 22(3) of Administrative Tribunal's Act, 1985 and in the matter of review of its orders, the same powers are vested in the Tribunal as in a Civil Court under the Code of Civil Procedure 1908. A Civil Court's power to review its own decision is contained in Order 47 Rule 1 of the Code of Civil Procedure. Order 47 Rule 1 provides as follows:-

"Order 47 Rule 1; Application for review of Judgement:

- (1) Any person considering himself aggrieved;
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.
 - (b) by a decree or order from which no appeal is allowed, or
 - (c) by a decision on reference from a Court of small causes and who, from the discovery of new and important matter) or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the court which passed the decree or made the order."

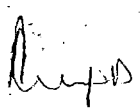
7. It is clear from the above proposition of law that any person who considers himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred, can apply for a review under Order 47 Rule 1(a) on the ground there is an error apparent on the face of the record or from the discovery of new and important matter or evidence which after the exercise of due

deligence was not within the knowledge or could not be produced at the time when the decree or order was passed but it has now come to his knowledge.

8. The petitioner's plea is that applicant in OA had been dismissed from service in the year 1999 vide order dated 30.7.99 and he had made an appeal against that order of dismissal requesting for personal hearing in the matter, as in view of the order of dismissal, it is not possible now to consider the case of the non-applicant for voluntary retirement, as directed by the Tribunal.

9. I have given very careful consideration to the arguments advanced by the learned counsel for the petitioner and I do not find any force in that argument. It is not the Petitioners' case that they were not aware of the order of the dismissal dated 30.7.99 or of appeal filed by the non-petitioner, on the date when the OA came up for hearing. The petitioner's plea is that this important fact could not be brought to the knowledge of the Tribunal despite due deligence. This explanation is totally unacceptable. It is in fact, a case of gross negligence on the part of the concerned officers of the department and the department cannot be permitted to make use of its own wrong to provide the grounds for review. It was not as if it was a new fact discovered but a matter of sheer negligence. These facts do not provide any reasons for reviewing the order passed. Thus Review Application is liable to be rejected as, is the same, in my considered view, is misconceived. For the reasons given by me, I do not consider it necessary to dwell on the legal issue raised by the opposite side contending that after the OA had ^{been admitted then} as per mandate imposed by Section 19(4) of the Administrative Tribunal's Act 1985 ~~whatsoever~~ no departmental authority could have taken any action/against the applicant in OA ~~which~~ which could have any bearing on the matter before the Tribunal.

10. I, therefore, dismiss this Review Application as the same is devoid of any merit, whatsoever.


(A.P. NAGRATH)
MEMBER (A)