IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JAIPUR BENCH,JAIPUR.

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Date of Order: 24/11/2003

RA 31/2001 (OA 394/94)

1. Union of India through Secretary, Department of Posts, Ministry of Communication, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Eastern Region, Ajmer,
4. Director Postal Services, Eastern Region, Jaipur, now at Ajmer.
5. Supdt. of Post Offices, Tonk (Rajasthan).

... Applicants

Versus

Ramesh Chand Sharma, Ex EDBPM, Bosariya via Uniara, Distt. Tonk.

... Non-Applicant

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM. MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

For the Applicants ... Mr.S.S.Hasan,Adv.brief holder for Mr.S.M.Khan

For the Non-Applicant ... Mr.S.K.Jain

O R D E R

PER MR.A.P.NAGRATH

This Review Application has been filed by the applicants (respondents in the OA) with a prayer that the order dated 2.8.2001, passed in the OA, may be recalled and the OA be dismissed with exemplary cost.

2. The non-applicant (applicant in the OA), Ramesh Chand Sharma, had filed the OA assailing the order of his removal from service. The said OA was allowed vide order dated 2.8.2001 and the respondents were directed to reinstate the applicant in service with all consequential benefits. Operative part of the said order reads as follows :

> "We, therefore, allow this OA and set aside the impugned orders at Ann.A/1, Ann.A/2 & Ann.A/3 and direct the respondents to reinstate the applicant in service forthwith with all consequential benefits, including back wages from the date of removal from service to the date of reinstatement."

3. The main ground, on which the review has been sought, is that th non-applicant cleverly distorted the findings of the inquiry officer i the typed document placed in the OA, wherein he manipulated the conclusic by adding 'not' against charge of misappropriation of Account No.134008 which the inquiry officer had held to have been proved. Thus, tl

impression given to the Tribunal was that the inquiry officer had held this charge as 'not proved'. Contention of the applicants in the review is that this order of the Tribunal has been obtained by the non-applicant by placing a false inquiry report before the Tribunal. As such, there is an error apparent on the face of the record, which deserves to be rectified. Consequently, the OA filed by the non-applicant deserves to be dismissed.

4. The second ground raised by the applicants in the review is that the Tribunal had held the matter to be a case of no evidence because the non-applicant had been charged for violation of Rule-131(1)(2)&(3) of the Rules for Branch Offices, which were held to be not applicable in the facts of the present case. Plea of the applicants is that this conclusion was arrived at by the Tribunal for the reason that the non-applicant placed some other copy of the rules before the Tribunal, which were not actually the rules for the violation of which he was actually charged.

5. A notice of this RA was sent to the non-applicant. The learned counsel on his behalf, Shri S.K.Jain, submitted before us that the non-applicant does not want to file reply. The matter was argued at length before us by the learned counsel for the parties.

6. The learned counsel for the applicants, Shri S.S.Hasan, very forcefully stated that the non-applicant had committed a fraud by deliberately distorting the findings of the inquiry officer in the typed copy, which he had annexed with the OA as Ann.A/12. Adverting to para-5, page-60 of the paper book of the OA, of that report, attached by the non-applicant in the OA, which relates to the findings of the inquiry officer, it has been mentioned against all the Account numbers that the charge of misappropriation has not been proved while rest of the charges in all Account numbers have been proved. The true copy of the inquiry report, which is now annexed with this RA as Ann.RA/1, he drew our attention to the same paragraph where the finding of the inquiry officer has been indicated that in Account No.1340085 the charge of misappropriation has been held to have been proved. He stated that this is a deliberate attempt on the part of the non-applicant to mislead the Tribunal and that somehow it escaped the notice of the Tribunal that the respodents had taken a plea even during arguments in the OA that one charge has been held to have been proved by the inquiry officer. The disciplinary authority having agreed with the inquiry officer had imposed the penalty of removal from service. To buttress his argument that an error has occurred on the face of the record, the learned counsel also drew our attention tc representation of the applicant filed in the OA as Ann.A/17, where the

applicant himself had extracted the findings of the inquiry officer showing that charge of misappropriation in Account No.1340085 has ben held to have been proved. His plea was that it is obvious that the deliberate attempt on the part of the non-applicant to distort the findings in the inquiry report resulted into this error of fact having occurred and that the Tribunal passed a final decision on the presumption that the charge of misappropriation in all cases has not been held to have been proved. Since, for rest of the charges, the findings of the Tribunal were that they were based on no evidence, the order of penalty was thus quashed. The learned counsel emphasised that even for this part of the conclusion the non-applicant is responsible for having placed before the Tribunal some copy of Rule-131, which was not relevant to the matter. According to the learned counsel, the applicant was charged for violation of Rule-131 of S.B.Business in Branch Offices which, after amendment in the Rules in 1984, has assumed the new number of Rule-221. He admitted that in the charge-sheet Rule-131 got mentioned erroneously as this Rule-221 prior to the amendment of 1984 had the No.131 and the same inadvertantly got mentioned in the charge-sheet. He vehemently stressed that since the non-applicant has resorted to manipulation of facts, which act amounts to a fraud, the RA deserves to be accepted, the order passed in the OA deserves to be recalled and OA dismissed.

7. Shri S.K.Jain, the learned counsel for non-applicant, resisted the submissions of the applicants on the ground that the scope of review is very limited and is confined to the provisions of Order-XLVII Rule-1 of CPC. According to Rule-1, the review lies only if some new and important matter or evidence which, after the exercise of due diligence, was found to be not within knowledge of the party seeking review or could not be produced by him at the time when the order was made or on account of some mistake or error apparent on the face of the record. His plea was that in the present situation none of the above provisions are applicable. He stated that the OA was filed in the year 1994, which came to be decided only by order dated 2.8.2001. It cannot be the case of the applicants that they were not aware of the copy of the document annexed to the OA, which they are now claiming to be not a true copy of the original document. He stated that it was not as if the applicants can claim that they have discovered this fact only now. He also emphasised that in the present case there was no mistake or error apparent on the face of the record. To discover any error on the face of the record, it should be on the face of it and no further investigation needs to be done. In the instant case, according to Shri Jain, to determine whether the document is authentic or not, further investigation is required to be done in case the plea of the applicants is considered. The law on review does not permit

this and only error which is apparent on the face can be given any cognizance. In support of his contention, Shri Jain relied upon the law laid down by the Apex Court in Smt.Meera Bhanja v. Smt.Nirmala Kumari Choudhury, AIR 1995 SC 455, wherein it was held by the Hon'ble Supreme Court that; " 'error apparent on face of record' means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions". Plea of the learned counsel was that what the applicants are seeking is rehearing of the matter for correction of any erroneous view taken earlier. He stated that the same was not permissible in view of the law laid by the Supreme Court in the case of Ajit Kumar Rath v. State of Orissa & Ors., 2000 (1) ATJ SC 689. He further strengthen his case and relied on the decision of the Supreme Court in B.H.Prabhakar & Ors. v. M.D.Kamataka State Coop.Apex Bank Ltd., 2000 (3) ATJ SC 353.

8. On the other point raised by the applicants that Rule-131 placed before the Tribunal by the non-applicant was also not correct and for violation of which he was charged, Shri Jain submitted that it does not lie in the mouth of the applicants now to take a plea that Rule-131 was different from what was understood by the Tribunal. He asserted that since as per applicants' own version that the same rule stood modified in 1984 and was renumbered as 221 then the non-applicant should have been charged with violation of Rule-221. This point now cannot be made a ground for review in the RA. Shri Jain also made a plea that in case the Tribunal came to a conclusion that this RA deserves to be accepted then he pleaded that the entire matter be reheard.

9. We have given our anxious consideration to the rival contentions. There is no doubt that scope of review is to be determined only within the confines of Order-XLVII Rule-1 of CPC and the legal position is well settled by te Apex Court in a catena of cases, some of which have been relied on by the non-applicant and quoted by us supra. The issue before us is whether there is an error apparent on the face of record, as stated by the applicants in the RA. They have placed before us a document (Ann.RA/1) which has been said to be a true copy of the inquiry report. We have seen the conclusions arrived at by the inquiry officer, wherein he has held that in Account No.1340085 the charge of misappropriation has been proved. As against this, the document filed by the non-applicant as a copy of the inquiry report as Ann.A/12 of the OA, it has been clearly typed against Account No.1340085 'sidh nahin hota' i.e. 'not proved'. We have no hesitation in saying that it does not need any further investigation to see that the report placed before the Tribunal by the non-applicant was not a true copy. While referring to para-13 of our

order dated 2.8.2001, passed in the OA, it has been clearly stated that the learned counsel for the applicant had aruged that the inquiry officer did not find the applicant guilty of the charge of misappropriation but he only held the applicant guilty for rest of the charges. Regarding rest of the charges, he had argued that there is no evidence. Para-14 is the finding of the Tribunal and it has been stated that in the instant case the inquiry officer did not hold the applicant guilty of misappropriation and found him guilty only for rest of the charges. Now if the true copy of the report indicates that charge of misappropriation in one Account had been proved but the Tribunal missed this point and considered this also as not proved, is obviously a case of error apparent on face of record. This does not need any further investigation to determine whether the inquiry officer had actually held this charge to have been proved. In fact, the non-applicant's own representation filed as Ann.A/17 to the OA proves this point beyond doubt. Therein the non-applicant had himself extracted the findings where the charge of misappropriation in one Account had been held to have been proved and he further has gone on to state in his representation at page-3 (i.e. page-88 of the paper book of OA) that the inquiry officer has held the charge of misappropriation in Account No.1340085 as proved. Thus, there is no doubt that the non-applicant misled the Tribunal by misrepresenting the facts and making a change in the findings with obviously in defarious designs. We would like to once again refer to Rule-1 of Order-XLVII of CPC. It states in clear terms that; "any person considering himself aggrieved - (a) ...., (b) ....,or (c) ...from the discovery of new and important mater or evidence which, after the 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 ...." (emphasis supplied). In the present case, there is more than sufficient reason to recall the order passed in the OA as the same was obviously passed on the facts misrepresented by the non-applicant and vehemently argued on his behalf by the learned counsel. We do not see any force in the plea of the learned counsel for the non-applicant that in case the Tribunal decides to recall the order, the matter in OA may be reheard. There is no ground for the same and only on this fact of deliberate effort of misrepresentation of facts, the OA deserves to be dismissed. We are in fact constrained to note that the non-applicant resorted to unacceptable means to obtain an order in his favour. There is no doubt that the respondents were required to highlight this aspect during arguments. The learned counsel for the applicants, Shri Hasan, did repeatedly emphasise that it was so stated before the Tribunal but somehow their plea got over-looked. Be that as it may, the fact remains that no party who resorts to unacceptable means can find support from a court of law to obtain any relief. We have no hesitation

in saying that the order in the OA needs to be recalled and OA dismissed.

10. In the light of the discussions aforesaid, this Review Application is allowed. The order dated 2.8.2001, passed in OA 394/94, is recalled and set aside. The OA is dismissed. The non-applicant i.e. the applicant in the OA deserves no relief from this Tribunal. In the normal course of things we would have imposed exemplary cost on the non-applicant for his conduct. However, taking note of the fact that he stands removed from service, we refrain ourselves from imposing any cost.

(M.L.CHAUHAN)
MEMBER (J)

(A.P.NAGRATH)
MEMBER (A)