

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day of September, 2006

REVIEW APPLICATION No 24/2005 (OA No.51/2003)
with Misc. Application No.398/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Durga Prasad Sharma
s/o Shri Kalyan Bux Sharma,
aged 62 years,
r/o Jamwa Ramgarh
c/o Shri Maha Laxmi Welcome House,
Jamwa Ramgarh (Jaipur),
last employed on the post of Assistant
Teacher, Railway Primary School,
Achnera (Dismissed from service)

..Applicant

(By Advocate: Shri Saurabh Purohit)

Versus

1. Union of India,
through the General Manager,
North-Western Railway Zone,
North Western Railway,
Jaipur.
2. The Divisional Railway Manager,
North Western Railway,
Jaipur Division,
Jaipur.
3. The Additional Divisional Railway Manager,
North-Western Railway,
Jaipur Division,
Jaipur.
4. The President,

16

Railway School
& Sr. Divisional Personnel Officer,
North-Western Railway,
Jaipur Division, Jaipur.

.. Respondents

(By Advocate:

ORDER (ORAL)

This Review Application has been filed pursuant to the order dated 19.10.2005 passed by the Hon'ble High Court in D.B.Civil Writ Petition No.8343/05 whereby the Writ Petition was dismissed and the applicant was directed to approach this Tribunal by way of Review Application on the ground regarding disproportionate punishment vis-à-vis misconduct which was raised before the Tribunal but it has been wrongly mentioned in the order that the said ground was not raised. At this stage, it will be useful to quota the aforesaid order of the Hon'ble High Court in extenso, which thus reads:-

"Learned counsel for the petitioner inter alia submits that though he has raised the specific ground/ issue before the CAT that punishment is disproportionate vis-à-vis the misconduct, but the CAT has wrongly mentioned in its order that this issue has not been raised, therefore, he has not accepted that ground.

We have perused the O.A. submitted before the CAT. In ground (E), specific issue has been raised, but it has wrongly been mentioned in the order that that has not be raised. Thus it is an apparent mistake. The appropriate course before the petitioner is first to approach the CAT by way of review petition, thereafter, the issue regarding disproportionate punishment vis-à-vis the misconduct will be considered in the writ petition. We see no substance in the petition at this stage.

The petition stands dismissed. However, the petitioner will be at liberty to approach the CAT by way of review petition in accordance with law."

2. Alongwith the Review application, the applicant has also filed Misc. Application for condonation of delay which was registered as MA No.398/05. Since the application was filed within 30 days after excluding the days when the application for copy of the order was presented in the Registry of the High Court and copy was delivered to the applicant, as such, no order is required to be passed on the application for condonation of delay and it is held that the Review Application is within limitation.

3. Now let us examine the case on merits, whether the applicant has made out a case for review. At the outset, it may be stated that the present Review Application is wholly misconceived. The applicant has made a wrong submission before the Hon'ble High Court that "though he has raised the specific ground/ issue before the CAT that punishment is disproportionate vis-à-vis the misconduct, but the CAT has wrongly mentioned in its order that this issued has not been raised," which resulted in making the observation in the second part of the order that the petitioner should first approach the CAT by way of Review Petition, thereafter, the issue regarding disproportionate punishment vis-à-vis misconduct will be considered in the writ petition. But what this

Tribunal has observed in the judgment was that the contention that the punishment from dismissal from service is disproportionate to the gravity of the charge cannot be entertained in view of the fact that the applicant has not raised this ground before the Appellate as well as the Revising Authority. This Tribunal has no where stated that the applicant has not raised this ground in the OA, as such, the said contention of the applicant cannot be accepted as contended by the learned counsel for the applicant. At this stage, it will be useful to quote relevant portion of the judgment which is at page 12 and 13 where such plea has been dealt with and findings recorded and thus reads:-

“.....His contention that the punishment of dismissal from service is disproportionate to the gravity of charges is also not accepted because this contention has not been raised in his Memo of appeal or application to the revising authority, and as principles of administrative jurisprudence, our role in the determination of punishment is very limited and this question can be decided by the administrations. Therefore, the OA is dismissed with no order regarding costs.”

4. As can be seen from the portion as quoted above, what this Tribunal has held is that the applicant has not raised the question as to whether the punishment imposed is not commensurate to the nature of misconduct before the appellate authority or the revising authority, as such, the applicant is precluded to take such plea for the first time in the OA. It may be stated that the view which this Tribunal has taken is in consonance of the view taken by the Apex Court in number of decisions. At this stage, it

will be useful to refer the decisions of the Apex Court in the case of Deokinandan Sharma vs. Union of India and Others, 2001 SCC L&S 1079. Further, the Hon'ble Apex Court in the case of Apparel Export Promotion Council v. A.K.Chopra, (1999) 1 SCC 759 in para 16 has held as under:-

“16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities.”

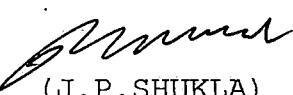
The aforesaid view was also reiterated by the Hon'ble Apex Court in the case of Narinder Mohan Arya vs. United India Insurance Co. Ltd., 2006 SCC (L&S) 840.

5. Further, this Tribunal did not think it proper to remit the case to the disciplinary authority, appellate authority or the revising authority who can go into the question as to whether the punishment imposed is commensurate or disproportionate to the nature of misconduct, in the absence of not having taken such plea before the aforesaid authority, as neither the Court nor the Tribunal can go into this question and for such cases, the proper course adopted would be to send the matter either to the disciplinary authority or to the appellate or revising authority to impose appropriate punishment. This view is in conformity with the law laid down by the Apex Court in

the case of State Bank of India vs. Samrendra Kishore Endow, 1994 SCC (L&S) 687. The Hon'ble Apex Court in this decision has also noticed that imposition of appropriate punishment is within discretion and judgment of the disciplinary authority. It may be open for the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from the decision, but a review of the manner in which the decision was made. Thus, from what has been stated above, the view taken by this Tribunal was in conformity with the settled position of law as laid down by the Hon'ble Apex Court. It is unfortunate that the learned counsel for the applicant has made wrong submission before the Hon'ble High Court which has led to passing of the order as extracted in the earlier part of this judgment and gave wrong impression to the Hon'ble Judges that the Tribunal has not dealt the matter in accordance with law and the issue regarding disproportionate punishment was not considered on the ground that such plea has not been raised in the OA. Thus, the learned counsel for the applicant has procured the order by making wrong submissions which was not expected from him, as besides being an advocate of the applicant he is firstly the Law

Officer of the Court and thus owe onerous duty to the Court to make proper submissions, rather than procuring the order by raising wrong contentions. Though it is a case where the Review Application should have been dismissed with costs being not only wholly frivolous but by filing a Review Application the valuable time of this Court has been encroached. However, we are of the view that the review applicant should not suffer on account of wrong submissions made by his advocate, we do not intend to go further in the matter.

6. For the foregoing reasons, the review application is dismissed with no order as to costs.



(J.P. SHUKLA)

Member (A)



(M.L. CHAUHAN)

Member (J)

R/