

**Central Administrative Tribunal
Principal Bench, New Delhi**

R.A.No.148/2016
C.P.No.306/2016
O.A.No.3451/2012

Order reserved on 19th December 2016

Order pronounced on 23rd December 2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

R.A.No.148/2016

Union of India through
The Director, National Gallery of Modern Art
Jaipur House
New Delhi – 110 003

..Applicant

(Mr. H K Gangwani, Advocate for review applicant)

Versus

Ganga Singh, aged about 65 years
s/o late Mr. Sudama Singh
c/o A-242, Minto Road Complex
New Delhi -2

..Respondent

(Mr. B L Wanchoo, Advocate)

O R D E R

Mr. K.N. Shrivastava:

R.A.No.148/2016

This R.A. has been filed by the review applicant (original respondent) under Rule 17 of Central Administrative Tribunal (Procedure) Rules 1987 read with Order XLVII Rules 1 & 2 of Code of Civil Procedure 1908 seeking review of the Tribunal's order dated 05.01.2016 passed in O.A. No.3451/2012. The operative part of the order under review reads thus:-

“44 As has been held by the Supreme Court in D.S. Nakara & Ors. Vs. Union of India, AIR 1983 SC 130, pension of a Govt. servant is not

a bounty to be released at the whims and fancies of the pension sanctioning authority, as pension of a Govt. servant is a reward in regard to the long years of service put in by him in a pensionable job, and to which he acquires a right, which cannot be denied to him in a frivolous or non-serious manner, as appears to have happened in the instant case. The case of the present applicant is particularly pathetic, as he was a low paid Government employee, and was hardly in a position to stand up before the authorities, and to be able to explain the shortages on the one hand, and the excess of the other items on the other hand, but was yet held responsible for misappropriation of Government funds, on the basis of grounds and evidence which are not at all very convincing to our mind.

45. Therefore, by way of an exception, having been shocked by the denial of due process of conduct of a D.E. by an impartial E.O., and also shocked by the quantum of the punishment imposed upon the applicant, we declare the whole process of enquiry conducted by the respondents as illegal and void ab –initio, since the Administrative Officer could not have functioned as an Enquiry Officer in this case, and also set aside the order of punishment imposed upon the applicant. We have already held in para 38/above that the period of his suspension from the 91st day of his suspension and onwards would be treated as “period spent on duty.”

46. We further order that all dues which become payable to the applicant by way of our orders as above shall be computed and paid to him within three months from the date of receipt of a copy of this order, with interest as applicable to the GPF from time to time, for the entire period when the amount due to him was denied to be paid to him.”

2. The review applicant has sought review of the *ibid* order of the Tribunal on the following important grounds:

- a) The Tribunal has grossly erred in not remitting the matter to the Disciplinary Authority to rectify the irregularity or illegality, if any, committed by the Inquiry Officer. In this regard, reliance has been placed on the judgments of Hon’ble Apex Court cited in AIR 1990 SC 449, AIR 1996 SCW 3005 and (1980) (1) SCC 252.
- b) The Tribunal failed to note that Mr. Ganga Singh, the applicant in the O.A. and respondent in the instant R.A., was placed under suspension

on 17.06.2005 for certain charges and that before the expiry of 90 days, his suspension was reviewed on 07.09.2005 and decided that he shall continue to remain under suspension till finalization of the disciplinary proceedings.

- c) The Administrative Officer of NGMA was not supervising the work of Mr. Ganga Singh, receptionist (respondent in the R.A.). The said officer was only issuing various publications and souvenirs from the Central Stores to various Receptionist-cum-Sale Counters of NGMA, Delhi and its Branches.
- d) The view taken by the Tribunal in paragraph 33 of the order under review that shortage of materials has not been established in the disciplinary inquiry, is factually incorrect.
- e) The observations of the Tribunal in paragraph 34 of the order that certain saleable items and publications, which were gifted to VVIPs and dignitaries were not taken into account, is also not correct. As a matter of fact *ex post facto* sanction had been taken in respect of all such gifted items and they have been duly accounted for in the stock register.

3. The *sine qua non* for reviewing the order of the Tribunal is presence of an apparent error on the face of record. In the instant case, we find all the important grounds raised in the R.A. for seeking review of the order have been considered by the Tribunal while adjudicating the O.A. The Tribunal has clearly held that the inquiry conducted suffers from illegality since the Administrative Officer has functioned as Inquiry Officer, a fact,

which has not been controverted in the R.A. While granting the relief, the Tribunal had placed reliance on the decision of Hon'ble Apex court in **D.S. Nakara's** case and had also given regard to the fact that the applicant had retired and had been punished on the basis of an inquiry, which was illegal. No apparent error on the face of the order under review has been brought out. The review applicant has also not mentioned anywhere that certain important documents, which were available on record and were relevant for the adjudication of the O.A. have not been considered. A plain reading of the R.A. gives a clear impression that it is in the nature of an appeal against the said order under review. Needless to say that the remedy for the review applicant against the *ibid* order of the Tribunal lies before an appellate forum and not before the Tribunal under review.

4. It is *stare decisis* that after disposing of an issue by final order, the Courts/Tribunals become *functuous officio*. The only exception to the principle is Review Application, which may be entertained only when there is an error apparent on the face of record, some such documents, which could not be produced at the time of final adjudication despite due diligence, are brought to the notice of the Court with Review Application, or there is some other sufficient reason.

5. Defining the scope of review proceedings by the Tribunal, the Hon'ble Apex Court in **Kamlesh Verma Vs. Mayawati and others**, (2013) 8 SCC 320 has held thus:-

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors.*, [(1955) 1 SCR 520], to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, [JT 2013 (8) SC 275].

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

6. In the conspectus of the discussion in the foregoing paragraphs, we do not find any merit in the R.A. Accordingly, the R.A. is dismissed. No costs.

C.P.No.306/2016

In view of the aforementioned order passed in R.A. No.148/2016 rejecting the prayer of the respondent for reviewing the order dated 05.01.2016, list this C.P. for consideration on 06.02.2017.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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