

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

**RA-172/2014 in
CP-512/2013 in
OA-1045/2012**

Reserved on : 04.04.2016.

Pronounced on : 07.04.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Amar Singh
Post Graduate Teacher-Delhi
r/o C-1/137, Yamuna Vihar
Delhi-110 053.

..... Review Applicant

(through Sh. Bani Singh, Advocate)

Versus

1. Shri Deepak Mohan Sapolia,
Chief Secretary,
Govt. of National Capital Territory of Delhi,
I.P.Estate, New Delhi-110 054.
2. Shri Anando Majundar,
Pr. Secretary (Education),
Govt. of National Capital Territory of Delhi,
Old Secretariat, Delhi-110 054.
3. Smt. Amita Singla,
The Director of Education,
Govt. of National Capital
Territory of Delhi, Old Secretariat
Delhi-110 054.

..... Respondents

(through Sh. R.N. Singh for Sh. K.M. Singh, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This review application has been filed by OA applicant for review of our order dated 12.08.2014 passed in CP-512/2013 in OA-1045/2012 by which the Contempt Petition was closed. The review applicant has stated that OA-

1045/2012 had been disposed of by this Tribunal on 02.11.2012 by the following order:-

"6. No doubt, the inordinate delay on the part of the respondents has caused great prejudice to the applicant. His retirement dues are still not settled. In the above facts and circumstances of the case and in the interest of justice, we grant further time of three months to the inquiry officer to finalize his report and submit the same to the disciplinary authority. On receipt of the inquiry officers report the disciplinary authority shall complete the necessary statutory requirements as per law and pass appropriate orders within next three months. The applicant may submit his appeal on the same, if so advised, and the appellate authority, on receipt of the same, shall consider and dispose of it within a period of two months thereafter. We also direct that, the applicant shall fully cooperate in the remaining part of the inquiry. In case the authorities concerned fails to comply with the aforesaid time schedule for finalization of the inquiry report, in spite of full cooperation extended by the applicant, this inquiry proceedings itself will abate from the expiry of the said date and the respondents will be liable to finally settle all the retirement dues of the applicant within two months thereafter.

7. With the aforesaid directions, this OA is disposed of. There shall be no order as to costs."

2. When the respondents did not comply with this order, the applicant had filed CP-512/2013. This Contempt Petition was, however, closed by the Tribunal on 12.08.2014. Learned counsel for the review applicant has alleged that following errors have crept into the aforesaid order by this Tribunal:-

"(i) That on page 4, in line 8 & 9 of the order under review it is stated that *"A copy of the inquiry report was given to the petitioner vide memo dated 28.3.2013 directing him to submit his representation, if any."* This statement is a mistake apparent from record because, as is evident from para 1 (a) of the applicant petitioner's rejoinder dated 6.12.2013 and Annexure PRJ 1 thereto, the inquiry report was served on the applicant petitioner on 6.5.2013 and not on 5.8.2013.

(ii) That on page 4, in line 10 & 11 of the said order it is stated that *"the applicant, submitted his representation on 5.8.2013 to the Director of education after a gap of 4 months."* This statement is also a mistake apparent from record because, as is evident from para 1(b) of the applicant Petitioner's rejoinder dated 6.12.2012 and Annexure-PRJ2 thereto, the applicant Petitioner had submitted his representation to the inquiry report on 14.5.2013 and not on 5.8.2013 and as such there was no delay on the part of the applicant petitioner in submitting his reply to the Inquiry report."

3. The review application has been opposed by the respondents, who have submitted that the review applicant was trying to re-argue his case.

4. We have considered the aforesaid submissions of learned counsel for both the sides. On going through our order, we find that the Contempt Petition was closed after noting that there had been substantial compliance of our order. This is evident from paras 2 & 3 of the order, which read as follows:-

"2. Notice in this case was issued to the Respondents on 11.10.2013. Thereafter, it was listed for hearing on 13.11.2013, 13.12.2013, 22.01.2014, 24.02.2014, 27.03.2014, 12.05.2014 and today, i.e., 18.07.2014. Meanwhile, the Respondents have filed their reply on 20.11.2013 seeking more time to finalize the disciplinary proceedings. Later, they have filed an Additional Affidavit on 04.02.2014 stating that the Inquiry Officer concluded the enquiry and submitted his report on 31.12.2012 and found that the charges leveled against the Petitioner have been proved. A copy of the aforesaid report was given to the Petitioner vide Memo dated 28.03.2013 directing him to submit his representation, if any. He submitted his representation on 05.08.2013 to the Director of Education after gap of 4 months. Thereafter, the Disciplinary Authority recommended 20% cut in his pension on 23.08.2013 and sent the relevant file to the Ministry of Home Affairs for passing the Presidential Order under Rule 9 of CCS (CCA) Rules, 1972. Thereafter, the concerned Head of the school submitted the prescribed UPSC forms duly filled in and it was forwarded to the ADE (Vigilance) on 07.09.2013 for further necessary action. The Deputy Director (Vigilance) forwarded the case file along with UPSC forms vide letter dated 28.10.2013 for passing the Presidential Order. In the meantime, the Pay and Accounts Officer-23, New Delhi fixed the provisional pension of the Petitioner at Rs.13,210/- plus RIP and paid the admissible amount with effect from 01.04.2012. Thereafter, the Petitioner is being paid provisional pension every month regularly. The dues on account of final GPF amount, Leave Encashment and CGEIS were also paid to him on 30.03.2012 and 10.05.2012.

3. We have heard the learned counsel for the Petitioner Shri Bani Singh and the learned counsel for the Respondents Shri K.M. Singh. It is seen that the Petitioner retired from service on 31.03.2012. It is a matter of great concern that the Respondents have kept the disciplinary proceedings pending against him for several years. The Applicant had to retire from service with the burden of the said disciplinary proceedings. It is in the aforesaid background that his Tribunal directed the Respondents to finalize the disciplinary proceedings against him in a time bound manner vide order dated 02.11.2012. From that date also it is now more than one year and eight months. Still the Respondents have not passed the final order. However, it cannot be denied that the Respondents have made substantial compliance of the Tribunals order dated 02.11.2012. The learned counsel appearing on behalf of the alleged contemnors have also assured that the final order in the matter will be issued at the earliest.

He has also stated that the Petitioner is being paid the provisional pension. We, therefore, close this petition. The Respondents shall ensure that full compliance of the directions of this Tribunal in order dated 02.11.2011 is made without any further delay. They shall also file affidavit of compliance."

5. It is trite law that contempt proceedings are initiated if there is wilful disobedience of the order of the Court. After noticing that respondents had taken several steps to comply with the order, this Tribunal had come to the conclusion that there was no wilful disobedience on the part of the respondents and hence closed the Contempt Petition. Thus, even if the contention of the review applicant is accepted that there were certain errors in para-2 of the order as far as dates were concerned, it would make no difference to the final outcome of the Contempt Petition, which was closed because substantial compliance of our order was noticed.

5.1 The next ground taken by the review applicant is that by passing the order in question, the Tribunal committed a mistake inasmuch as granting additional time for compliance of the order meant that the Tribunal had amended the order passed in O.A. according to which if the disciplinary proceedings were not completed as per the time schedule prescribed in the order, they were to abate. The review applicant has submitted that this Tribunal could not have passed this order as 30 days after passing of the order dated 02.11.2012 this Tribunal had become functus officio as laid down by the Apex Court in the case of **Greaves Cotton Ltd. Vs. Govt. of NCT of Delhi & Ors.**, 2012(1)SLJ 283 (SC).

6. We have considered the aforesaid submission. In our opinion, the review applicant is challenging the order of this Tribunal closing the Contempt Petition on a legal ground. This is beyond the scope of review application in which errors of clerical nature alone can be corrected. If the applicant was aggrieved by

the orders of this Tribunal, he should have availed of appropriate legal remedy available to him. If we were to entertain this ground in a review application, we would be sitting in judgment over our own order and hearing the case afresh.

7. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent 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 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 matters or errors committed by the Subordinate Court."

7.1 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument

being needed for establishing it. **It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently in the rule.**

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

[Emphasis added]

7.2 In the case of **Gopal Singh Vs. State Cadre Forest Officers’ Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

“The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.”

8. Thus, we find that none of the grounds taken by the review applicant can be considered in this review application. No other ground was pressed before us. In view of the aforesaid, we find no merit in this review application and dismiss the same. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/