

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A. No. 204/2016 In
O.A. No.2450/2013

New Delhi this the 7th day of October, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)

Shri M.T.J. Chishti
S/o Late J.A. Chishti,
425, Sector-A, Pocket C,
Vasant Kunj,
New Delhi-110070.

...Review Applicant

Versus

1. Union of India
Through the Secretary,
Department of Culture,
Shastri Bhavan,
New Delhi-110011.
2. The Director General of Archives,
Government of India,
National Archive of India,
Janpath, New Delhi-110001. Respondents

ORDER BY CIRCULATION

Record perused.

2. As is evident from the record (judgment Annexure A-2), that review applicant was appointed as Assistant Archivist in the National Archives of India on 20.06.1980. As a Government servant, he was bound by the code of conduct, as prescribed by the Rules and Regulations applicable to the Government servants. However, the review applicant did not follow the code of conduct as a public servant.

3. In pursuance of the complaint of his third wife, Smt. Reshma Tariq Chisti, a criminal case was registered against the applicant vide FIR No.123 dated 12.03.1996 charging him with criminal assault. He was arrested by the police of Police Station, Vasant Kunj. He kept concealed the factum of registration and arrest in the criminal case from the authorities. However, his third wife informed the department, vide letter dated 26.03.1996. He remained absent from duty and went to USA, without any prior permission of Head of the Department or getting his leave sanctioned by the competent authority.

4. As a consequence thereof, a regular Departmental Enquiry was initiated against the review applicant and ultimately he was compulsorily retired from his service. The review applicant appears to be a chronic litigant and has filed the following applications:-

- "1) First OA No.2089/2011 - Decided on 13.09.2002
- 2) Second OA No.3037/2002 - Decided on 22.10.2003
- 3) Third OA No.365/2008 - Decided on 10.11.2008
- 4) Respondents RA No.190/2008 -Decided on 24.12.2008
- 5) Fourth OA No.1208/2010 - withdrawn on 18.11.2011
- 6) Execution Petition M.A.No.1188/2012 - Dismissed on 31.05.2013
- 7) CPNo.85/2013 in OA No.365/2008 - Decided 20.05.2013
- 8) M.A. No.147/2013 - Disposed off on 31.05.2013".

5. This is not the end of the matter. The review applicant has filed the Original Application (OA) bearing No.2450/2013 with the following prayers:-

- "(a) quash the order(s) dated 26.12.2012 and 30.05.2013 and direct the respondents to treat the period of illegal suspension as spent on duty;

- (b) grant all consequential benefits including regular pay and all benefits like increment, allowances etc. interest date of his suspension i.e. 21.08.1997 as the delay was because of the deliberate intention of the office in order to systematically torture the applicant;
- (c) litigation cost may be awarded in favour of the applicant;
- (d) pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case”.

6. Having heard the arguments, the Hon’ble Administrative Member has held that the impugned orders whereby the period of suspension of the review applicant was treated as non-qualifying by the respondents, cannot be assailed as he has failed to challenge the source orders of the Disciplinary Authority dated 19.01.2009 and 22.09.2009, whereas the Hon’ble Member (J) has held that his period of suspension with effect from 21.08.1997 is liable to be adjudicated upon in terms of Fundamental Rules (FR) 54-B.

7. Therefore, in view of difference of opinion and in the wake of reference order dated 01.02.2016 in OA No.2450/2013, having considered the material on record, relevant rules 10(6) & 10(7) of the CCS (CCA) Rules, 1965, and concurring with the conclusion of Hon’ble Member (J), the reference was answered by me (as a Third Member) vide order dated 27.04.2016 as follows:-

“11. A plain and meaningful reading of these provisions would reveal that in case period of suspension is not extended within a stipulated period of 90 days or 180 days, as the case may be, then the suspension orders would automatically become invalid after that period.

12. In the instant case, no cogent material is forthcoming on record to indicate that, either the respondents have passed any

such extension order beyond the stipulated period of 90 days or 180 days, as the case may be, or such orders were ever communicated to or received by the applicant. It is not a matter of dispute that subsequently the applicant was compulsory retried by the respondents.

13. Sequelly, FR 54-B posits that when a Government servant who has been suspended is re-instated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order re-instatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of retirement (including premature retirement), as the case may be and whether or not the said period shall be treated as a period spent on duty or otherwise.

14. Meaning thereby, the respondents were legally required to examine the matter of period of suspension of the applicant in view of Rules 10(6) and 10(7) of the CCS(CCA) Rules, 1965 and FR 54-B, by means of passing a speaking order, which admittedly has not been done in the present case.

15. Therefore, I concur with the view taken by Hon'ble Member (J) and direct the respondents to decide the matter of period of suspension of applicant with effect from 21.08.1997 till 18.02.2000 by treating it as non-qualifying service or otherwise, in accordance with FR 54-B, as ordered by Hon'ble Member (J). Therefore, the reference is accordingly answered in favour of the applicant".

8. Now the review applicant has filed the instant RA and prayed that the benefit of the period of his service w.e.f. 18.02.2000 to 19.01.2009 be also granted to him. Possibly, this prayer of the review applicant cannot be accepted. As indicated hereinabove, even he has not claimed this particular relief in the main OA. Thus, if the review applicant has not claimed the pointed relief in the main OA, then he cannot be granted the same benefit in the garb of present RA.

9. Therefore, once the indicated reliefs were granted to the review applicant and respondents were directed to decide the matter of period of his suspension in accordance with FR 54B, then the remaining benefit, if any, of the pointed period claimed by the review applicant, would be

legally deemed to have been denied and refused on the analogy of Explanation V to Section 11 of Civil Procedure Code, 1908 which postulates that any relief claimed in the plaint, which is not expressly granted by the decree, shall, be deemed to have been refused by the court.

10. Moreover, what cannot possibly be disputed here is, that it is now well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of **Parsion Devi and Others vs. Sumitri Devi and Others**

(1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa
(1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das
(2003) 11 SCC 658 and Gopal Singh Vs. State Cadre
Forest Officers' Association & Others (2007) 9 SCC
369.

11. An identical question came up to be decided by Hon'ble Apex Court in case **State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612**. Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

“(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or

development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier”.

12. Meaning thereby, the indicated order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 as explained by Hon'ble Apex Court in the indicated judgments and not otherwise. In the present RA, the review applicant has not pointed out any error apparent on the face of record warranting a review of the order dated 27.04.2016 (Annexure-A1), particularly when all the issues now sought to be raised, were subject matter of the OA and have already been adjudicated upon by me (Third Member) in the manner indicated hereinabove.

13. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground, much less cogent is made out to entertain the present Review Application. Having perused the record in chamber, the instant RA is hereby dismissed, in the obtaining circumstances of the case. All concerned be informed accordingly.

(Justice M.S. Sullar)
Member (J)
07.10.2016

Rakesh