

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

**RA-221/2014 in
OA-4084/2011**

Reserved on : 31.03.2016.

Pronounced on : 05.04.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Union of India through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.

..... Review Applicant

(through Sh. R.N. Singh, Advocate)

Versus

1. Sh. Sanjay Gihar,
S/o Sh. Radhey Shyam,
R/o A-110, Shivalik Near Malviya
Nagar, New Delhi-110017.
2. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, I.P. Estate,
New Delhi. Respondents

(None)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by Respondent No.1 in OA-4084/2011 with the following prayer:-

- "(a) afford the applicant herein opportunity of hearing on the present Review Application;
- (b) review its order dated 30.9.2013 in OA No. 4084/2011 and consequently modify the same to the extent the adverse findings/observations against Sh. Vyomesh Pant, Section Officer, Ministry of Home Affairs, more particularly in paras 20 to 23 of the order/judgement dated 30.9.2013, may be ordered to be deleted or appropriately modified or clarified.

(c) may also pass any further order (s) as be deemed just and proper to meet the ends of justice."

2. The contention of the review applicant is that while the judgment of this Tribunal dated 30.09.2013 has since been implemented by the respondents, the review has been sought for deletion of certain adverse findings/observations made in paras 20 to 23 of the judgment against one Sh. Vyomesh Pant, Section Officer, Ministry of Home Affairs by suitably modifying the order or clarifying the same. Notice was issued to respondent in this review application/OA applicant. However, no appearance has been made on his behalf in this case despite service.

3. We have heard learned counsel for the review applicant. He stated that certain adverse findings and observations in the judgment have been made against Sh. Vyomesh Pant, Section Officer without impleading him as a party in the aforesaid O.A. and without affording any opportunity to him to clarify his position before this Tribunal. This would not only cause hardship to the aforesaid officer in career progression but may also cause civil consequences in other spheres of his life. The OA applicant had neither alleged any mala fide nor any administrative bias against Sh. Vyomesh Pant nor has the same been proved by any of the parties before this Tribunal. Thus, there was no motive attributed to Sh. Vyomesh Pant, who has no personal grudge or interest in this matter. Whatever has been done by him has been done in official discharge of his duties. Further, learned counsel for the review applicant stated that Sh. Vyomesh Pant was a junior officer, who was only involved in processing the case on the basis of information derived from the record or discussions held in the meeting. He had placed on record all material facts and had not attempted to mislead the competent authority. Learned counsel argued that an error

apparent on the face of the record had crept into the judgment of this Tribunal inasmuch adverse observations have been made against Sh. Pant without affording an opportunity to him to clarify his position.

3.1 Learned counsel in support of his contention has relied on the judgment of Apex Court in Civil Appeal No. 1792/1997 (**State of Bihar Vs. Lal Krishna Advani & Ors.**) dated 16.09.2003 in which the following has been observed:-

"It is thus amply clear that one is entitled to have and preserve, one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutory recognised and violation of the same will have to bear the scrutiny of judicial review....."

3.2 Learned counsel has also relied on Apex Court's judgment in the case of **Board of Trustees of the Port of ... Vs. Dilipkumar Raghavendranath**, 1983 AIR 109 in which the following has been held:-

"The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner. But we want to be very clear that we do not want to go that far in this case because it is not necessary for us to do so. The all important question: where as a sequel to an adverse verdict in a domestic enquiry serious Civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner is kept open."

4. We have considered the aforesaid submissions and have gone through our judgment. On reading the same, we find that it is indeed correct that certain adverse observations have been made against Sh. Vyomesh Pant, Section Officer, in the judgment. While, it is true that these observations were made after perusing the relevant record of the concerned department and

were based on the facts contained therein, there is merit in the contention of the review applicant that before making these adverse observations, no opportunity had been afforded to Sh. Vyomesh Pant to explain his position before this Tribunal. Thus, an error apparent on the face of the record has crept into our order inasmuch as remarks having adverse consequences for Sh. Vyomesh Pant have been made without impleading him as a party or without giving him an opportunity to defend himself. Consequently, our order in question needs to be suitably modified to remove this error.

5. We, therefore, allow this Review Application and direct that paras 20 to 23 of our judgment be modified to read as follows:-

“20. However, during implementation of the aforesaid recommendations of the Suspension Review Committee, the higher authorities were misled by a false note, which stated that the Suspension Review Committee had decided that on revocation of applicant's transfer he will join Andaman and Nicobar Islands. The relevant part of the note is as under:-

“The Committee, after considering the facts and circumstances of the case, has recommended that the suspension of Shri Sanjay Gihar may be revoked and on his reinstatement, he may be given a non-sensitive posting. The minutes of the meeting of the Committee may “be seen at pages 229-232/cor.

XXX XXX XXX

“The suspension review committee has also decided that on revocation of suspension Shri Sanjay Gihar will join Andaman and Nicobar Island. Necessary orders to that effect may be communicated separately.”

Thereafter, the impugned letter dated 18.04.2011 was sent to the Chief Secretary, Government of NCT of Delhi informing him also that the applicant was being posted to Andaman and Nicobar Islands on the recommendation of the Suspension Review Committee and requested

him to relieve him immediately. The relevant part of the said letter reads as under:-

"3. Further, the Competent Authority has also decided on revocation of suspension, Shri Gihar will join Andaman and Nicobar Island Administration.

4. It is, therefore, requested that on revocation of his suspension, he may be relieved immediately and directed to report to Andaman and Nicobar Islands Administration".

21. Thereafter, when the applicant submitted his representation against the said transfer, the same was examined again and a misleading note was recorded on 09.05.2011 stating that since the transfer of the applicant to Andaman and Nicobar Islands was on the reconsideration of the Suspension Review Committee, his request cannot be accepted. It was also added in the note that the Committee recommended his transfer to Andaman and Nicobar because of the investigation of the corruption case against him which was being done by the ACB, Delhi. The relevant part of the note was as under:-

"In his representation, Shri Gihar has mentioned that he has already served in A&N Islands and his name is not in the station seniority list. He has also given a list of officers senior to him who had never served in the outlying segments. It may, however, be observed that Shri Gihar was transferred to A&N Islands as per the decision of Suspension Review Committee and not as a matter of routine transfer. The Committee had observed that since the investigation in corruption case is being done by the ACB, Delhi, it would be appropriate to post Shri Gihar at Andaman.

In view of the above, Shri Gihar may be directed to join A&N Islands immediately as per DFA."

22. From the above factual position, it is seen that due to misleading and false statements made in the notes, the applicant was again transferred to Andaman and Nicobar Islands for a second term irrespective of the fact that he had already served there for about 04 years and several other officers senior to him in DANICS were put in Delhi without having been transferred to the outlying segments of the DANICS even once.

23. In the above facts and circumstances of the case, it is seen that the reason stated in the impugned order for transfer of the applicant to Andaman and Nicobar Islands and was issued by the officers working with Respondent No.1 after obtaining the approval of the competent authority by furnishing totally false information.

24. xxxx

25. xxxx

6. Registry is directed to make necessary correction in the order dated 30.09.2013 and supply a copy of the same to the parties concerned.

(Shekhar Agarwal)
Member (A)

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

/Vinita/