

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

**RA-233/2014 in
OA-105/2008**

Reserved on : 09.09.2015.

Pronounced on : 10.09.2015.

Hon'ble Mr. G. George Paracken, Member (J)

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. S.K. Shinghal,
Age 48 years,
S/o Harsharan Dass,
C/o D.P. Bansal,
R/o A-44, J.J. Colony,
Tegri, Khanpur,
New Delhi.

.... Review Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

1. Union of India through
Secretary,
Dept. of Dak Bhawan,
Ashoka Road, New Delhi.
2. Chief Post Master General,
U.P. Region,
Lucknow.
3. Director Postal Services,
Office of Postal General
Agra Region,
Agra.
4. Sr. Superintendent of Post Office,
Bulandsahar Division,
Bulandsahar.
5. Sarvesh Devi,
S/o Sh Sukhbir Singh,
R/o Village Hasanpur,
P.O. Khas,
Distt. Bulandsahar,

Uttar Pradesh. Respondents
(through Sh. Rajinder Nischal, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed for review of our judgment dated 21.11.2014 in OA-105/2008 by which the OA had been dismissed. The respondents, on the other hand, have filed reply opposing the review application stating that the applicant was just trying to reargue the case.

2. Learned counsel for the review applicant argued that the following grounds, which were taken by the applicant in his defence have escaped the attention of the Tribunal and have not been considered in the aforesaid judgment:-

"(i) Because the fact remains, Raj Bala in her statement had specifically stated that her signatures and seal are bogus and the aforesaid witnesses also stated that no Postal Officer had contacted her in relation to the verification of death certificate in dispute.

(ii) Because the fact remains, the Postal Superintendent was also not produced in the inquiry being the material witness.

(iii) Because Sh. Ram Nath Ji was also shown as prosecution witness but he did not appear in the inquiry and in this respect, none of the officer from office of birth and death certificate was produced in the inquiry and the authenticity of the death certificate was not ascertained.

(iv) Because Sh. Ram Nath was the material witness and inspite of the fact that he did not appear in the inquiry, his statement has been relied upon which is not apt in law."

3. Learned counsel for the review applicant also submitted that Hon'ble High Court of Delhi in the case of **UOI Vs. V.D. Sharma**, WP(C) No.13115/2004 decided on 31.08.2010 had directed that the Tribunal while deciding matters should consider all the grounds taken by the OA applicant and should not pick

and choose only one or two of them ignoring the others. On the basis of the above submission, learned counsel argued that the review application be allowed.

4. The respondents, on the other hand, argued that each of the grounds taken by the OA applicant had been considered in the judgment and the review application should be dismissed.

5. We have considered the aforesaid submissions. It is noticed that all the grounds which the review applicant claims escaped the attention of the Tribunal pertained to evidence relating to the genuineness of the death certificate of Sh. Harveer Singh. While dealing with the issue of death certificate in our judgment, we have observed as follows:-

“5.3 The third issue is regarding the death certificate of Sh. Harveer Singh. In this regard, the applicant submitted that the death certificate relied upon by the department was unreliable as it was issued on the basis of an entry made in the Parivar Register which had not been signed by anybody. Moreover, he contended that there were many infirmities in the Parivar Register and the same cannot be relied upon. In this regard, he relied on the judgment of Hon’ble High Court of Delhi in Crl. Rev. P. No. 528/2009 & Crl.MA No. 10977/2009 (**Radhey Shyam Vs. STATE**) pronounced on 09.09.2010, in Para-13 of which it has been observed as follows:-

“13.....In the true attested copy of the Kutunbvar Register issued by AW-1 (Ex.AW1/DB), the house number of the petitioner was shown as 203, whereas in the Register actually brought by the said witness in Court, the house number of the petitioner was mentioned as 143 at page No. 387. The register was not signed or authenticated against the entries made therein whereas, the witness admitted that whenever an entry was made in the Register, the Gram Panchayat Adhikari was required to authentic and sign the same. The witness admitted that while he had recorded several entries during his tenure as Gram Panchayat Adhikar since 12.12.2006, he had never signed the register at any place for authenticating the entries made therein for recording births, deaths and marriages, etc.”

Further, he has furnished the extracts of U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970, Rule-4 and Rule-5 of which read as follows:-

“4. **Quarterly entries in the family register.**- At the beginning of each quarter commencing from April in each year, the Secretaries of a Gaon Sabha shall make necessary changes in the family register consequent upon births and deaths, if any occurring in the

previous quarter in each family. Such changes shall be laid before the next meeting of the Gao Panchayat for information.

5. Correction of any existing entry.- The Assistant Development Officer (Panchayat) may on an application made to him in this behalf order the correction of any existing entry in the family register and the Secretary of the Gaon Sabha shall then correct the Register accordingly."

On the basis of the aforesaid, learned counsel for the applicant argued that the death certificate relied upon by the respondents to claim that Sh. Harveer Singh had expired on 14.09.2004 is unreliable. Moreover, learned counsel argued that both the father of the deceased as well as his wife had given statements that Sh. Harveer Singh had died on 20.01.2005 i.e. after the date of withdrawal from the TD account. As such, the charge levelled against the applicant was unsustainable.

On the other hand, the respondents argued that the village register clearly had an entry that Sh. Harveer Singh had expired on 14.11.2004. The competent authority had issued a certificate certifying this to be the date of death of Sh. Sukhbir Singh. On the directions of the Court, the respondents had again approached the Block Development Officer who had confirmed that this certificate had been issued by the competent authority on the basis of an entry made in the Parivar Register, which showed the date of death of Sh. Sukhbir Singh as 14.09.2004.

We have heard the submissions of both the sides. It is trite law that in judicial review re-appraisal of evidence is not to be done. If two opinions are possible then it is not open for the Courts to substitute their judgment for the judgment of the DA/AA. The role of the Courts is limited to see whether the case at hand was a case of no evidence or whether the findings arrived at by the DA/AA were perverse. In the instant case, we find that the applicant has only succeeded in raising doubts about the correction of the content of the death certificate issued by the competent authority. He has not been able to produce any other certificate showing a different date of birth of the deceased Sh. Harveer Singh. Thus, two contending views were available to the DA/AA. One was to rely on the certificate purportedly issued by competent authority and duly counter signed by departmental officials and the other was to reject the same on the ground that it was issued on the basis of an entry made in the Parivar Register, which itself was unsigned by any authority and therefore unreliable. The DA and AA chose the former and relied upon the death certificate. In our opinion, in judicial review, we cannot substitute our judgment on the judgment of the authorities concerned. "

6. Thus, our view has been that in judicial review, it was not open to this Tribunal to re-appraise the evidence and substitute its judgment over the judgment of DA/AA. We have observed that two contending views were available before the authorities and they have chosen to rely on the death certificate of Sh. Harveer Singh produced in the inquiry and that there was no

reason for this Court to take a different view and substitute the same for the view of DA/AA.

7. The grounds which the review applicant claims escaped the attention of the Tribunal only relate to establish the genuineness or otherwise of the death certificate. It was not necessary for us to discuss the entire evidence on this issue while delivering our judgment. Since we had come to the conclusion that it was not a case of no evidence and enough evidence was available for DA/AA to rely on the genuineness of the death certificate. We had observed that the finding arrived at by the DA/AA were not perverse. Under these circumstances, it cannot be said that these grounds were not considered by the Tribunal as alleged by the review applicant.

8. The review applicant has also stated that the Tribunal has failed to consider his submission that the punishment inflicted on him was highly excessive and not commensurate with the gravity of the charge. It is now well established by law that in judicial review, it is not open to the Courts to go into the quantum of punishment until and unless such punishment is found to be shocking to the conscience of the Court. Since the charge against the applicant related to allowing withdrawal from an account after the death of the depositor, it was a grave charge. The punishment of dismissal from service awarded to the applicant under the circumstances cannot be called excessive so as to shock the conscience of the Court. While, it is true that this has not specifically been stated in our judgment, even if we had dealt with this ground, it would have had no bearing on the outcome of this O.A.

9. No other ground was pressed before us by the review applicant. Under these circumstances, we do not find any merit in this review application and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(G. George Paracken)
Member (J)

/Vinita/