

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA No. 238/2015 with
MA No.3034/2015 in
OA No-4213/2013

Order Reserved on: 14.07.2016
Order Pronounced on: 06.09.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Mukesh Kumar Tyagi (Aged about 49 years)
Inspector, Delhi Police
R/o House No. 45,
Vill. & PO: Chatarpur,
New Delhi.

-Applicant

(By Advocate: Shri S.N. Kaul)

Versus

1. Commissioner of Police,
National Capital Region,
Indraprastha Marg, New Delhi.
2. Joint Commissioner of Police
South West, New Delhi.
3. Dy. Commissioner of Police
West District, Delhi.

-Respondents

(By Advocate: Ms. Sangeeta Tomar)

O R D E R

Per Sudhir Kumar, Member (A):

This Review Application has been filed by the review applicant on 02.07.2015 seeking a review of the detailed 22 pages order dated 13.05.2015.

2. The applicant has taken a number of grounds in this Review Application, trying to point out the aspects and observations in the order

as passed in his OA which he considers to be erroneous and to have been passed without this Tribunal taking cognizance of the principles of natural justice.

3. In the result, through this Review Application, the review applicant has prayed for the following reliefs:-

- “a) To call for the records and review the impugned judgment in the right perspective.
- b) To hold the impugned orders passed by Disciplinary Authority awarding punishment of “Censure” and upholding such order in Appeal deserves to be quashed being not legally tenable.
- c) To pass any order or orders in the present Review and to render justice”.

4. Heard the learned counsel of the review applicant, who strenuously tried to point out the various observations made in the order as passed in the applicant's OA, and submitted that the Bench could not have arrived at the finding of upholding the award of punishment of “Censure” upon the review applicant by the official respondents, and that the Bench had failed to take cognizance of the fact that the respondents had, before passing the order of “Censure”, not supplied a copy of the preliminary enquiry report to the review applicant, and had not afforded him sufficient opportunity to defend his case.

5. On the other hand, learned counsel for the respondents submitted that there was nothing wrong with the order as passed, and tried to present the facts of the case once again, as detailed by her in the counter

reply dated 04.02.2016. She also emphasized upon her reply to the MA for condonation of delay filed on 04.02.2016, and submitted that no genuine grounds had been mentioned in the Miscellaneous Application for condonation of delay, because of which the condonation of delay could be allowed. She also submitted that the review applicant could have engaged another counsel in case the counsel in the OA was not available to him to file the Review Application in time, as has been mentioned in the MA praying for condonation of delay.

6. After having given due consideration to the arguments advanced by the counsel of both the parties, we have once again gone through the judgment and order as passed by our Bench on 13.05.2015 and have found that most of the issues, as raised by the review applicant in the present Review Application, have already been adverted to while deciding his OA.

7. It is trite law that the powers of review of orders passed by this Tribunal are quite limited, and a review applicant cannot be allowed to file an appeal in the guise of a review application. The order as passed in the applicant's OA had come to the conclusion that the respondents had not deviated from the Rules and the procedure, and had not taken any extraneous facts into consideration while deciding the applicant's case initially, and later deciding his appeal against the order of punishment. In our considered opinion, the Review Applicant is only trying to reargue the matter through this RA, which is not permissible in view of the ratio

as laid down by the Hon'ble Apex Court in **State of West Bengal vs. Kamal Sen Gupta 2008 (8) SCC 612.**

8. In ***Parson Devi and Others vs. Sumitri Devi and Others*** [1997 (8) SCC 715], the Apex Court has held as under:-

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"."

9. In ***Ajit Kumar Rath Vs. State of Orissa*** (1999 (9) SCC 596), the Hon'ble 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 of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised 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 analogous to those specified 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."

10. Further, in **Union of India v. Tarit Ranjan Das, 2004 SCC (L&S)**

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SC 2537, it was categorically held by the Hon'ble Apex Court that in the garb of a Review Application, the Tribunal cannot re-examine the issue, and a review is allowable only if the error pointed out is plain and apparent, on the face of the record. We do not find that the review applicant before us has been able to point out any error apparent on the face of the record. We are bound by the Hon'ble Apex Court's judgments cited above.

11. Therefore, while MA No.3034/2015 praying for condonation of delay is allowed, but the Review Application No.238/2015 is dismissed. Needless to add that the review applicant would have full opportunity to take recourse to further proceedings as per law, if he is so advised.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)