Central Administrative Tribunal
Principal Bench

RA No. 241/2015 in OA No. 3536/2014
With
RA No. 240/2015 in OA No. 3557/2014

Order Reserved on: 27.01.2016
Order Pronounced on: 16.02.2016

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)

Shri G.P. Upadhyaya,
S/o late Sh. Parashuram Upadhyaya,
Aged 49 years,
Permanent R/o A-504, Plot No.2,
Sector-19, Chitrakoot Dham CGHS,
Dwarka, New Delhi
Presently R/o 5th Mile, Gangtok-737102,
Working as Principal Secretary
Govt. of Sikkim at Gangtok -Applicant

(By Advocate: Shri R.N. Singh)

VERSUS

Union of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001
(through its Secretary) -Respondent

(By Advocate: Shri Rajinder Nischal)

ORDER

Dr. B.K. Sinha, Member (A):

Since the instant two Review Applications have been filed against the common order of the Tribunal dated 22.07.2015 passed in OA Nos. 3536/2014 and 3557/2014, they are being disposed of by this common order.

2. The applicant has principally urged three grounds in support of the review applications. In the first instance, applicant submits that it is a well admitted position, even by the respondents, that there was no ill-motive and no allegation of financial impropriety and/or of accrual of personal gains in the case. Hence, no misconduct is made out, and, as such, there is no basis for the chargesheet to stand. In the second place, the applicant submits that there has been delay of almost 13 years in framing the charges and conduct of the departmental proceedings. Under such circumstances, as per various pronouncements of the Hon'ble Supreme Court, the life of the cases gets automatically extinguished. The applicant further submits that decisions of various courts relied upon by him have been taken note of in the order but have not been discussed. In the third instance, the learned counsel for the applicant submitted that this court is having all powers under Article 226 which are even more extensive than the powers of the Hon'ble Supreme Court under Article 36 of the Constitution. Therefore, it was an apparent error on part of the Tribunal to record in the impugned order that the Tribunal is not armed with the powers under Article 142 exercised by the Hon'ble Supreme Court as it has been vested with very limited power under Article 226 and, therefore, is not in a position to take decision for quashing the chargesheet.

3. The respondents have filed their counter affidavit opposing both the review applications. The learned counsel for the respondents submitted that there was an admitted violation of rules of the borrowing institution by the applicant to which he was on deputation. None including the applicant, the respondents submit, had denied the decision taken against the rules. The punishment was, therefore, warranted. The Tribunal has very correctly observed that in view of the acknowledged position of having committed violation of rules and the punishment having been already awarded, the chargesheet could not have been cancelled. The UPSC also advised imposition of punishment upon the applicant. The ends of justice have been fully met by anti-dating the impugned punishment by the Tribunal vide its order under review to the effect that the impact of the punishment should take effect from the date of the alleged charge i.e. 1998 and not from the date the chargesheet was issued. Hence, nothing more is required to be done.

4. We have carefully gone through the pleadings of the rival parties and the documents so adduced on their behalf. We have also patiently heard the arguments advanced by the respective counsels representing the parties. It is an admitted position that no allegation of mala fide, dishonesty

and/or derogation of interest of the borrowing organization have been alleged by the respondents, rather they have submitted that there is no misconduct involved and that the applicant had taken the decision in the interest of the organization. For the sake of greater clarity, we extract the relevant portion of the Tribunal's order as under:-

> *"33. We have further taken note in respect of the issue of delay that though delay by itself is not sufficient to quash the impugned order awarding the penalty upon the applicant yet the same is to be reckoned while deciding the proportionality of sentence. Admittedly, the action of the applicant was in the interest of the respondent organization and also that the applicant is an M.Tech from the Indian Institute of Technology, who has been suffering on account of this proceeding pending, both in matters of promotions and in reputation. The very fact is that pendency of the departmental proceeding is sufficient to reduce the morals of the officers down to the dumps. They do not remain capable of taking bold decisions which are required to be taken in the heat of work. At the same time, we also admit that such observations would have been more suitable for the Hon'ble Supreme Court which is armed with powers under Section 142 and not with the Tribunal which is confined only to exercise of power under Rule 226 in a limited manner. Yet, taking into account the above factors, namely the applicant acting in the interest of the organization, no personal allegation of malafide or misappropriation being there and the immense delay caused in initiating the action against him and completing the same, we are prone to take a view that this action has already harmed the career prospects of the applicant and is likely to do so in a major way in the future when he comes up for being considered as Additional Secretary or for higher ranks. We are also afraid that if such exercise of uncontrolled exuberance in the interest of organization leads punishment, it will serve to dampen the other young officers, who sometimes exceed the law in the interest of the work and for the people. Therefore, taking note that while law has to be implemented what is more important is justice must be delivered. Keeping in view the facts of the case, we are of the view that the punishment inflicted in both the cases should not relate back to the date of issuance of chargememo, i.e., 11.02.2008 and 03.07.2008, but should relate back to the year to which the charges relate, i.e., 1998. In other words, the impact of the punishment should take effect from*

> *the date of the alleged charge, i.e., 1998, and not from the date the chargesheet was issued, i.e., 11.02.2008 and 03.07.2008. With this, the OA is disposed of. No order as to costs."*

Here, it is necessary to delve into the scope of review. The power of review has been provided under Section 22(3)(f) of the Administrative Tribunals Act, 1985 and it draws strength from Order 47 Rule 1 of CPC, but it has been subjected to various interpretations. In case of *Board of Control for Cricket in India & Anr. Vs. Netaji Cricket Club & Ors.* [2005 (4) SCC 741] the Hon'ble Supreme Court held as under:-

> *"88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.*
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> *93. It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake."*

5. We find that the paragraphs, quoted above, deal with the jurisdiction of High Courts in entertaining review applications under Section 114 of the CPC which does not prescribe any limitation for the same. These also provide

that High Courts, while considering the review applications may take note of subsequent events. However, in the instant case, the question is not one of the powers of High Court to review its own decision but one of the Tribunal's powers to review its own decision. In this regard, we find that in *Surjit Singh & Ors. Vs. Union of India & Ors.* [1997 (10) SCC 592], the Hon'ble Supreme Court held as under:-

> *"7....Under these circumstances, the view of the Tribunal is clearly illegal; unfortunately, the Tribunal has wrongly stated that if they commit mistake, it is for this Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. When a patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct, with grace, its mistake of law by way of review of its order/directions."*

Perusal of the above paragraph reveals that when a patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct its mistake in law by way of review of its order/directions.

6. The respondents have also relied upon the decision in *Kamlesh Verma Vs. Mayawati and Ors.* [2013 (8) SCC 320], the Hon'ble Supreme Court has provided both the negative and the affirmative *lis* where a review is maintainable or not maintainable. For the sake of clarity, we extract the relevant portion as under:-

> *"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
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> *20.1. When the review will be maintainable:-*

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram v. Neki, [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius & Ors., [(1955) 1 SCR 520], to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors., [JT 2013 (8) SC 275].

20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its .soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

7. This is also supported by the decision of the Hon'ble Supreme Court in ***State of West Bengal and Others versus Kamalsengupta and Another*** [2008 (8) SCC 612].

8. There is no ambiguity on this point that a review is not an appeal in disguise and the parties are not permitted to re-argue the case in guise of a review application. The review is confined only to the points i.e. discovery of new and important evidence which were not within the knowledge and notice of the petitioner or could not be produced by him by mistake and/or any error apparent on record or any other sufficient reasons which have to be analogous to those specified in the rules.

9. In the instant case, we find that the points raised by the review applicant have already been noted and dealt with. We have already stated that there is no disagreement over the issue that there are no charges of misappropriation, irregularities or ill motive against the applicant. To the contrary, it has been clearly accepted that motive of the applicant was the highest in the interest of the organization that he was serving. We have also taken note of our earlier observation in the order that the punishment awarded to the applicant will continue to haunt him as promotions to higher ranks of Additional Secretary and Secretary are on the basis of entire performance of the assessed employee in his service career. We also accept the argument of the learned counsel for the respondents that once the order remains on record, it is likely to affect the applicant adversely in one way or the

other. It is an undisputed fact that the applicant was holder of 16th rank in the IAS and possessing B. Tech and M. Tech from IIT. Therefore, in exercise of equity, we also take note that having come this far and to absolve the applicant of ill-motive and having recognized that officers are likely to commit such indiscretion in the exuberance of youth and interest of work, we require to take a view of the same in exercise of our equity jurisdiction.

10. The question would now arise as to why we did not exercise this equity jurisdiction in the first instance. The answer is simple that the Tribunal is a court of law and is confined to the rules of law. On the other hand, the Hon'ble Supreme Court has almost been given a carte blanche to pass decrees or orders as may serve the ends of justice. This power is only available with the Hon'ble Supreme Court and not with the Tribunal. Therefore, the Tribunal had chosen to refrain from exercising its equity jurisdiction.

11. To our mind, the error, if any, lies in refusal of the Tribunal to exercise its equity jurisdiction. The Hon'ble Supreme Court in *Chairman and Managing Director, Central Bank of India & Ors. Vs. Central Bank of India SC/ST Employees Welfare Association and Ors.* [MANU/SC/ 0019/ 2016] held as under:-

> *"13. We would be candid in our remarks that once an error is found in the order/judgment, which is apparent on the face of record and meets the test of review jurisdiction as laid down in Order XLVII Rule (1) of the Supreme Court Rules, 2013 read with Order XLVII Rule (1) of the Code of Civil Procedure, 1908, there is no reason to feel hesitant in accepting such a mistake and rectify the same. In fact, the reason for such a frank admission is to ensure that this mind of patent error from the record is removed which led to a wrong conclusion and consequently wrong is also remedied. For adopting such a course of action, the Court is guided by the doctrine of ex debito justitiae as well as the fundamental principal of the administration of justice that no one should suffer because of a mistake of the Court. These principles are discussed elaborately, though in a different context, in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602]."*

12. We reiterate at the end that a system in which good work gets punished while bad work is often rewarded is not the best of them all. We also recognize that if this punishment is allowed to stand, it will act as deterrent for the young officer to act in the interest of the organization even at the cost of personal risk. Therefore, we clarify/modify our earlier order to the extent that the order of punishment shall not be reckoned or would be taken into account in any matter where the promotion or selection of the applicant for some selection/assessment is done in future.

13. With the above modification, both the instant review applications stand disposed of.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

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