

**Central Administrative Tribunal
Principal Bench**

**RA No.45/2015
OA No.2255/2014
MA No.73/2015**

Reserved on : 08.11.2017
Pronounced on : 16.01.2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Tushar Ranjan Mohanty
aged 56 years,
S/o Shri Rabi Narayan Mohanty
An SAG Officer of the Indian Statistical Service
Deputy Director General,
Research and Publication Wing,
Central Statistics Office,
Ministry of Statistics and Programme Implementation,
Room No.6, Wing No.6,
West Block No.8, R. K. Puram,
New Delhi 110 066.
(under Orders of Transfer to Ajmer)
Now residing at
G-31, HUDCO Place Extension,
New Delhi 110 049.

... Review Applicant.

Versus

1. UNION OF INDIA through
The Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi 110 001.
2. Prof. T. C. A. Anant
Chief Statistician of India and Secretary,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi 110 001.
3. Shri D. K. Sharma
Under Secretary (ISS and Vigilance)
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi 110 001.

... Respondents.

(By Advocate : Shri R. N. Singh)

: O R D E R :

Justice Permod Kohli, Chairman

This Review is directed against the order dated 04.12.2014 passed by a Division Bench of this Tribunal in OA No.2255/2014. Vide the impugned order, OA No.2255/2014 filed by the applicant challenging order dated 04.07.2014 (Annexure A-1therein) has been dismissed. The applicant had claimed the following reliefs in the said OA:-

- “8.1 to allow the present application ;
- 8.2 to quash and set aside Order dated 04.07.2014 (Annexure A-1) as being bad in law;
- 8.3 to allow exemplary costs of the application; and
- 8.4 to issue any such and further order/directions this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case.”

2. Briefly stated, the facts leading to filing of the aforesaid OA are that the applicant who is a member of Indian Statistical Service, Group-A, and is working in Senior Administrative Grade (SAG) of service was issued a minor penalty charge sheet dated 10.09.2012 under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He challenged the said charge sheet in OA No.502/2013. It appears that during the pendency of the said OA, the disciplinary proceedings culminated into imposition of penalty of ‘Censure’. The applicant accordingly challenged the penalty of Censure in a separate OA No.2837/2013. In view of the above

circumstances, the applicant withdrew OA No.502/2013 wherein the challenge was made to the minor penalty charge sheet dated 10.09.2012. Subsequently, OA No.2837/2013 wherein the penalty of Censure was challenged came to be disposed of vide order dated 11.12.2013 with the following observations/directions:-

“15. We, therefore, allow this OA and quash and set aside the impugned minor penalty of “Censure” imposed upon the Applicant vide order dated 20.08.2013. The Respondents shall pass appropriate orders in compliance of the aforesaid direction within a period of one month from the date of receipt of a copy of this order. However, we make it clear that we have not gone into the merit of the charge or any other aspect in this case. We also make it clear that this order will not come in the way of Disciplinary Authority from holding an enquiry in the matter in terms of Rule 16 (1) (b) of the CCS (CCA) Rules, 1965, if after taking a decision in the matter and if so advised.”

There being some typographical error which was sought to be rectified in RA No.19/2014 filed by the applicant was allowed vide order dated 25.03.2014. The order dated 04.07.2014 impugned in OA No.2255/2014 reads as under:-

“ORDER

Subject : Disciplinary proceedings against Shri Tushar Ranjan Mohanty, DDG for his appearance in Central Administrative Tribunal (CAT).

In compliance with orders dated 11.12.2013 and 25.03.2014 of Hon’ble Central Administrative Tribunal (CAT), Principal Bench, New Delhi in the OA No.2837/2013 in the matter of Shri T. R. Mohanty Vs. Union of India, the Disciplinary Authority i.e. Hon’ble Minister for Statistics & Programme Implementation has ordered for holding an inquiry and for taking further action against Shri T. R. Mohanty, DDG.

2. Further action for holding inquiry is in process.

(D. K. Sharma)
Under Secretary to the Govt. of India"

This order was issued in view of the liberty granted by the Tribunal to the respondents in terms of the order dated 11.12.2013 passed in OA No.2837/2013. Challenge to this order was, however, not accepted by this Tribunal vide impugned judgment dated 04.12.2014 passed in OA No.2255/2014.

3. In the present RA, Mr. Tushar Ranjan Mohanty, the applicant who argued in person has raised following three grounds for challenging the impugned judgment in the present review proceedings:-

- (i) that the order dated 04.07.2014 has been passed without quashing the penalty of Censure earlier imposed upon the applicant.
- (ii) that the same has not been issued by the Disciplinary Authority
- (iii) that the said order has not been passed in the prescribed format, i.e., Form-4 appended to the CCS (CCA) Rules, 1965.

4. The grounds of review have been urged in paras 12 & 13 of the present Review Application. In para 12 of the RA, a reference is made to para 11 of the impugned judgment of this Tribunal. The

applicant has also referred to the issues being noticed by the Tribunal in para 7 of the judgment under review. In para 7, the Tribunal noticed as under:-

“.....It was also contended that the impugned order of 04.07.2014 was violative of the provisions of Section 19 (4) of the Administrative Tribunals Act, 1985 because the Tribunal had issued notice in OA No.1983/2014 and, therefore, during its pendency, the respondents could not have taken any further action in the matter.”

The Tribunal considered the issues raised by the applicant and returned the findings in para 11 & 12 of the judgment.

“11. We shall now examine the issues raised by the applicant in the OA. The first contention of the applicant is that the impugned order of 04.07.2014 is bad because of defects in the order namely that it had not been issued by the Disciplinary Authority. The impugned order is reproduced below:-

“ORDER

Subject: Disciplinary proceedings against Shri Tushar Ranjan Mohanty, DDG for this appearance in Central Administrative Tribunal(CAT).

In compliance with Orders dated 11-12-2013 and 25-03-2014 of Hon’ble Central Administrative Tribunal (CAT), Principal Bench, New Delhi in the OA No.2837/2013 in the matter of Shri T.R.Mohanty Vs. Union of India, the Disciplinary Authority i.e. Hon’ble Minister for Statistics & Programme Implementation has ordered for holding an inquiry and for taking further action against Shri T.R.Mohanty, DDG.

2. Further action for holding inquiry is in process.

(D.K.Sharma)
Under Secretary to the Govt. of India”
(Emphasis added).

The reading of the aforesaid order makes it clear that this is just a communication of a decision taken by the Disciplinary Authority and this has been so stated by the Under Secretary in the communication. The original records produced by the respondents also show that after the decision dated 11.12.2013 in OA No.2837/2013, the matter was referred to the Department of Personnel & Training and to the Ministry of Law & Justice for their advice. After receipt of the advice from the aforementioned two Ministries, the file was submitted to the Hon'ble Minister as Disciplinary Authority, who ordered for holding an enquiry. The contention of the applicant to the effect that the decision was not taken at the competent level, therefore, is not found acceptable. It was not the decision of the Under Secretary that was conveyed in the order of 04.07.2014 but was that of the Disciplinary Authority. The Under Secretary had merely conveyed the decision. The related contention of the applicant that the impugned order is bad also because it was issued without withdrawing the penalty of Censure is also not valid. Once the Tribunal quashed the order of Censure vide its order dated 11.12.2013 in OA No.2837/2013, no order of penalty of Censure survived and the order issued earlier, thus, because non-est. This procedural aspect does not need further consideration because of above.

12. The application of mind of the Disciplinary Authority is also clear from the original records, which have been referred to above. The Tribunal in its order dated 11.12.2013 had clarified that the setting aside of the order of penalty of Censure would not come in the way of the Disciplinary Authority from holding an enquiry in the matter in terms of Rule-16(1) of the CCS (CCA) Rules, 1965. Rule-16(1)(b) of CCS (CCA) Rules, 1965 reads as follows:-

“(b) holding an inquiry in the manner laid down in sub-rules(3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary.”

A reading of the above Rules makes it apparent that the enquiry has to be conducted in the manner prescribed under sub-rules (3) to (23) of Rule-14. There is, thus, no further requirement of stating any reasons, nor did the order of the Tribunal so require from the respondents to state reasons for holding the enquiry. The Charge-Sheet was neither quashed nor set aside and the Tribunal in its order of 11.12.2013 had also made it clear that the merit of the charge or any other aspect of the matter had not been gone into. In the light of above, it was not necessary for the respondents to specify the reasons for the decision conveyed vide order dated 04.07.2014, and further that the decision of the respondents to hold enquiry was in compliance of the order of the Tribunal dated 11.12.2013.”

5. We have heard the applicant and Shri R. N. Singh, learned counsel for the respondents.

6. It is settled law that the parameters envisaged under Order XLVII, Rule 1 of Code of Civil Procedure are to be applied for entertainment of the review application before this Tribunal. It is well settled proposition of law that review can be allowed specifically on three grounds, i.e., (i) mistake or error apparent on the face of record; (ii) discovery of new and important matter or evidence, which, even after exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the order sought to be reviewed was passed; and (iii) for any other sufficient reason. It is also equally well settled that the scope of review is very limited, and a review is by no means an appeal in disguise, whereby an erroneous decision is reheard and corrected,

but it lies only for patent error(s). In other words, it cannot be used as a forum to re-establish or re-argue the matter on merit.

7. The case of the applicant does not fall under the first clause as he has not invoked the jurisdiction on account of discovery of new facts. It has also not been argued that there is an error apparent on the face of record inviting intervention in exercise of power of review.

8. In any case, we find that there is no error apparent on the face of record, nor it is so pleaded. Shri Mohanty has, however, emphasized on the ground "other sufficient cause". In order to support his contention, he relied upon following judgments:-

"Awadh Kishore Tiwari v. Damodar Valley Corporation, Calcutta, AIR 1994 SC 482.

Board of Control for Cricket, India vs. Netaji Cricket Club, AIR 2005 SC 592."

It is contended that the respondents were required to issue order under Form-4 appended with CCS (CCA) Rules, 1965. The same having not been done, there is violation of rules and the Tribunal has not considered this important aspect in its earlier judgment. It is also contended that the order dated 04.07.2014 had been issued without withdrawing the order of Censure which had been earlier issued and the orders have not been issued by the Disciplinary Authority.

9. From the perusal of the impugned judgment, we find that the question of order being not in Form-4 was not raised or argued

before the Tribunal. The other two issues have been duly considered and dealt with by the Tribunal in detail as referred to hereinabove. If the applicant has any grievance as regard to the merits of the findings, he was at liberty to seek appropriate remedy and for this purpose the review jurisdiction cannot be invoked. There is no error apparent on the face of record. Although the issue that the order dated 04.07.2014 was not issued in Form-4 was not urged before the Tribunal, the same having been raised here, we have considered the same.

10. Forms which are appended to the rules are not statutory forms as such these forms do not find mention either under Rule 14 or under Rule 16 of the CCS (CCA) Rules, 1965. Such forms appear to be on account of some administrative instructions. It is not mandatory that the order should be strictly in the format. If substantially the contents of the form are adopted in the order it amounts to substantial compliance. We are of the considered view that non adherence to the exact form may not invite an order for quashing the order or proceedings. As regards the plea of the applicant that the Censure order has not been revoked, again reference is made to the aforesaid form only. The Tribunal in its impugned judgment dated 04.12.2014 has specifically dealt with this issue and held that the Censure order having been quashed by the Tribunal does not survive and thus it was not required to be

withdrawn. As regards the plea of the applicant that the order impugned has not been issued by the Disciplinary Authority, the Tribunal has held that perusal of the original record revealed that the order has been duly approved by the competent Disciplinary Authority. The impugned order dated 04.07.2014 is only a communication and there is sufficient compliance of the provisions of law. The said order has been only communicated by the Under Secretary to the Government of India. Communication of the order is merely a ministerial act and if the order has been passed by the competent authority and communicated by an officer of the Government, there is no violation of any rule or law.

11. The circumstances under which the review jurisdiction is to be exercised have been laid down by the Hon'ble Supreme Court in para 35 of **State of West Bengal and Others Vs. Kamal Sengupta and Another** [2008 (8) SCC 612] in para 35. The same reads as under:-

“35. The principles which can be culled out from the above noted judgments are :

- (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. We do not find any valid ground to interfere in the order impugned in exercise of review jurisdiction. This Review Application is accordingly dismissed. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/