

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.879/2014 in R.A.No.51/2014
and
RA No.51/2014 in OA No.1228/2010

Order Reserved on: 13.10.2015
Order pronounced on 16.10.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Mr. Kukkikatte Krishnamoorthy
S/o Late Sri Kukkikatte Gopal Shanbogue,
R/o # 38, Kamakshi Apartments,
Sector-6, Dwarka, New Delhi 110 075
Last employed as:
Joint General Manager, MPF,
Ordnance Factory Board,
Ambarnath.

.... Applicant

(By Advocate: Shri Abhijit Bhattacharya)

V.

1. Union of India through
Rep. By Ordnance Factory Board,
Ministry of Defence,
10-A, Shaheed Khudiram Bose Road,
Kolkatta-700001.
2. The DGOF & Chairman,
Ordnance Factory Board,
10A, Shaheed Khudiram Bose Road,
Kolkatta-700001.

3. Sri B. Pugazhendhi,
Additional General Manager,
Heavy Vehicles Factory,
Avadi, Chennai.
4. Union of India
Rep. By Shri Kuldip Singh,
Under Secretary, Ministry of Defence,
D(FY.I), Sena Bhawan,
New Delhi-110 011. Respondents

(By Advocate: Shri S.M.Arif)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, an officer of the Indian Ordnance Factories Service of 1980 batch, filed the OA No.1228/2010, seeking the following reliefs:

- A. "For an order setting aside the Final order of the Disciplinary Authority No.11(2)/99-D(Fy-I) dated 26.07.2009 passed by the 4th Respondent herein;
- B. For an order quashing the Inquiry Proceedings No.09/A/VIG/KK/05 initiated against the Petitioner by the 1st Respondent;
- C. For an order that the Petitioner stood retired from service with effect from 30.11.2005; and
- D. For any such other order/s as is deemed fit and proper in the facts and circumstances of the case."

2. This Tribunal, after hearing both sides, by its Order dated 25.11.2011, dismissed the OA.

3. Aggrieved by the same, the applicant preferred WP(C) No.6761/2013. The Hon'ble High Court of Delhi, by its order dated 28.10.2013, while permitting the applicant to withdraw the said Writ Petition, observed as under:

"1. Issues of fact not to be found in the pleadings are sought to be urged in the writ petition challenges the order dated November 25, 2011.

2. Conceding to the fact that the issues of fact pertaining to the peon book showing dispatch of communication to the petitioner, as recorded in the documents on November 29, 2005, has not been urged in the Original Application. Contention urged by learned counsel for the petitioner is that said fact came to his notice when, under directions of the Tribunal, respondents filed an affidavit enclosing therewith photocopy of certain documents which included the relevant page of the peon book. Counsel concedes that at that stage, since the question of fact arose for consideration permission ought to have been taken from the Tribunal to file supplementary pleadings.

3. It is settled law that questions of fact which are disputed have to be raised before the Court or the Tribunal of first jurisdiction so that the same can be adjudicated upon by the Court of first instance or the Tribunal. A Writ Court is no place to settle controversies of fact.

4. Counsel states that he may be permitted to withdraw the petition with right of the petitioner noted to file an appropriate application before the Tribunal.

5. We permit the petitioner to withdraw the writ petition.

6. The petitioner may avail remedy as available in law before the Tribunal by either seeking review or filing such application as is permissible. The same shall be decided by the Tribunal as per its jurisdiction.

7. On the subject of limitation, we may simply note that the instant writ petition is listed today for preliminary hearing raising a challenge to the order dated November 25.2011.

8. The petition stands disposed of as not pressed observing as above.

C.M Nos.14676/2013 and 14677/2013

Dismissed as infructuous.”

4. Thereafter, the applicant filed the present RA along with the MA, seeking condonation of delay of 749 days, in filing the RA.

5. Heard Shri Abhijit Bhattacharya for the applicant and Shri S.M. Arif, the learned counsel for the respondents and perused the pleadings on record.

6. This Tribunal dismissed the OA No.1228/2010 on 25.11.2011. The applicant filed the WP (C) No.6761/2013 against the said order dated 25.11.2011 of this Tribunal, on 28.10.2013. The said WP was permitted to be withdrawn with an observation that the applicant may avail remedy as available in law before the Tribunal by either seeking review or filing such application as is permissible and that the same shall be decided by the Tribunal as per its jurisdiction. The present RA is filed on 13.01.2014 with a delay of 749 days.

7. The applicant in his application for condonation of delay stated that he is presently residing at Abujha, Nizeria, Africa, and could not immediately make the necessary arrangements, including of funds, and hence there was delay in filing the Writ Petition. Similar reason was also stated in respect of the delay occurred from the date of disposal of the WP to the date of filing of the RA. However, the learned counsel, while admitting that there was an abnormal delay in filing the Review Application, and that the reasons mentioned are not sufficiently explaining the said delay, submitted that the delay may be condoned in the interest of justice, and that no prejudice will be

caused to the respondents, if the delay is condoned and that the RA is heard on merits.

8. The Hon'ble High Court of Delhi while permitting the petitioner to withdraw the Writ Petition, has not condoned the delay in filing the Review Application before this Tribunal. On the other hand, the Tribunal was directed to decide the review or any application filed by the applicant, as per its jurisdiction, i.e., in accordance with law.

9. It is to be seen that the applicant is a Group 'A' officer of the Indian Ordinance Factories Service of 1980 batch, and worked in various senior positions in the Government of India, till he was removed in the year 2009. Hence, the bare submission that he could not file the WP, initially, and the RA thereafter, within time due to the paucity of funds and in contacting his counsel cannot be accepted. His case cannot be equated with an ordinary Group 'D' or to any other employee in the lower rungs of the hierarchy. Even otherwise, the delay is abnormal and not supported by any valid reasons. Therefore, as held by the Hon'ble Apex Court in **Lanka Venkateswarlu v. State of A.P.**, (2011) 4 SCC 263 that the concepts such as 'liberal approach', 'justice oriented approach', 'substantial justice', cannot be employed to Jettison the substantial law of limitation, especially in cases where there is no justification for the delay, the MA No.879/2014, filed for condonation of delay, is dismissed.

10. Even on merits, the applicant filed the present Review Application on the main ground that the issues of fact pertaining to the Peon Book

showing despatch of communication to the applicant, as recorded in the documents on 29th November, 2005, has not been urged in the OA as the said fact came to his notice when, under directions of the Tribunal, the respondents filed an affidavit enclosing therewith the photocopies of certain documents which included the relevant page of the Peon Book. All the other grounds raised in the R.A. were already raised, argued and considered while disposing of the OA.

11. The Hon'ble Apex Court in **Ajit Kumar Rath v. State of Orissa and Others** - (1999) 9 SCC 596 held that "power of review available to the Tribunal under Section 22(3)(f) is not absolute and is the same as given to a Court under S. 114 read with Order 47 Rule 1 of CPC.". It has further held that "the scope of review is limited to correction of a patent error of law or fact which stares in the face, without any elaborate argument being needed to establish it" and that "exercise of power of review on a ground other than those set out in Order 47 Rule 1 amounts to abuse of liberty granted to the Tribunal and hence review cannot be claimed or asked merely for a fresh hearing or arguments or corrections of an erroneous view taken earlier."

12. In **Union of India v. Tarit Ranjan Das**, - 2004 SCC (L&S) 160 – the Hon'ble Apex Court held that the scope of review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits.

13. In **State of West Bengal and Others v. Kamal Sengupta and Another** – (2008) 8 SCC 612 – the Hon'ble Apex Court after referring to **Ajit Kumar Rath's** case (supra) held that "an order or decision or judgement cannot be corrected merely because it is erroneous in law or on the ground a different view could have been taken by the Court/Tribunal on a point of fact or law and while exercising the power of review the Court/Tribunal concerned cannot sit in an appeal over its judgment/decision."

14. In a recent judgment, the Hon'ble Supreme Court in **Kamlesh Verma v. Mayawati and Others** (2013) 8 SCC 320, after discussing various case laws on the jurisdiction and scope of review, summarised the principles of review as under:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

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 Poulouse 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."

15. Admittedly, the applicant came to know about the Peon Book particulars well before the final disposal of the OA No.1228/2010. The applicant was within his knowledge of the said fact, well before the disposal of the OA and nothing prevents him from taking appropriate steps either by filing an additional affidavit or by amending the OA after seeking an appropriate leave from the Tribunal, if he was of the opinion that the said facts are required to be brought on record, but the applicant without taking the said steps at the appropriate time, allowed the Tribunal to dispose of the same finally on 25.11.2011. Hence, the applicant failed to show any valid reason or error apparent on the face of the record warranting this Tribunal to invoke the revisional jurisdiction.

16. Accordingly, in the circumstances and for the aforesaid reasons, the Review Application is dismissed not only on the ground of limitation but also on merits. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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