

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.60/2016
in
O.A.No.1622/2015

Order Reserved on: 10.08.2016
Order pronounced on 01.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Manjeet Kaur (Regular Grade-I, DANICS)
Aged about 46 years
W/o Sh. Naresh Kumar
R/o DA-15B, Hari Nagar
New Delhi – 110 064. Applicant

(By Advocate: Ms. Priyanka Bhardwaj for Sh. M.K.Bhardwaj)

Versus

Govt. of NCT of Delhi & Ors. through:

1. The Lt. Governor of Delhi
LG House, Raj Niwas, Delhi
2. The Chief Secretary
Govt. of NCT of Delhi
New Secretariat,
I.P.Estate, New Delhi.
3. The Director Employment
IARI, Pusa
Govt. of NCT of Delhi
New Delhi.

4. The Directorate of Education
 Govt. of NCT of Delhi
 Through its Director
 Old Secretariat
 Civil Lines, Delhi. ... Respondents

(By Advocate: Sh. Pradeep Kumar for Sh. Vijay Pandita)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, who is holding the substantive post of Grade-I (DASS) and working as ad hoc DANICS under the respondent-Government of NCTD, filed the OA questioning the legality and validity of the Annexures A2 and A1 Orders dated 29.01.2014 and 01.04.2015, in issuing the charge memorandum and in imposing the penalty of removal, respectively.

2. The seminal facts of the case are that while the applicant was holding the substantive post of Grade-I (DASS), the respondents vide Order No.626 dated 14.11.2012 appointed the applicant along with others with immediate effect, on ad hoc and emergent basis, against ex cadre post equivalent to DANICS carrying higher responsibilities for a period of six months or till further orders or the posts are filled up on regular basis. Accordingly, while the applicant is working as ad hoc DANICS/VATO, the respondents issued the Annexure A2 Charge Memorandum dated 29.01.2014, in respect of certain omissions and commissions of the applicant. After conducting a regular departmental inquiry under Rule 14 of the CCS (CCA) Rules, 1965 and after

providing opportunity to the applicant, the respondents vide the Annexure A1 penalty order dated 01.04.2015 imposed the penalty of removal from service on her. This Tribunal, after hearing both sides, dismissed the said OA, on merits.

3. The applicant, vide his OA and at the time of hearing, raised various grounds in support of his claim in the OA. One of the grounds was that since the penalty order was passed by the Lt. Governor of Delhi, who is not the competent disciplinary authority, he lost his substantive right of appeal and hence, the penalty order should be quashed.

4. This Tribunal while accepting the contention of the applicant that the Lt. Governor, who imposed the punishment of removal on the applicant, is the appellate authority, however, following the decision of the Hon'ble Apex Court in **U.P. Power Corporation Ltd. & Another v. Virender Lal (Dead) through his LRs**, (2013) 10 SCC 39, held that the substantive right of appeal of the applicant was not deprived since he can prefer an appeal under Rule 24(1)(i)(b) of the CCS (CCA) Rules, 1965 to the President, and by permitting the applicant to prefer such an appeal within 45 days from the date of receipt of the order of the Tribunal, dismissed the OA.

5. The applicant in the OA filed the present RA, mainly contending that Rule 24(1)(i)(b) is applicable only where no appellate authority is specified and in case of the applicant since the appellate authority is

specified, the said Rule has no application, and hence, an error apparent has crept in the Judgement of this Tribunal dated 26.02.2016.

6. Heard both the learned counsel and perused the pleadings on record.

7. This Tribunal heard both sides before disposing of the OA on various rival issues, including the present ground raised by the review applicant. After considering the same, and after examining the relevant rules, and by giving a finding, the OA of the applicant was finally dismissed. The applicant is now trying to re-argue the OA by raising the same ground, which was argued, considered and decided.

8. The law on review is well settled. 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."

9. 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.

10. 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.”

11. 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 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 negated."

12. In the light of the aforesaid dicta, the RA is devoid of any merit and is, accordingly, dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)