

Central Administrative Tribunal
Principal Bench

**R.A. No.78/2014 in
O.A. No.2979/2012**

Order reserved on: 09.12.2015
Order pronounced on: 18.01.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. A.K. Bhardwaj, Member (J)

Shri Bhanwar Pal
S/o Late Shri Bhagwant Singh
R/o GH-9, Paschim Vihar,
New Delhi-110087. -Applicant

(By Advocate: Shri Kartar Singh)

Versus

1. The Chief Secretary
Through
Govt. of NCT of Delhi
Delhi Govt. Secretariat
I.P. Estate, I.T.O.,
New Delhi. -Respondents
2. Director of Education,
Govt. of NCT of Delhi
Old Secretariat,
Civil Lines, Delhi-54.

(By Advocate: Shri N.K. Singh for
Mrs. Avinash Ahlawat)

O R D E R

Per Sudhir Kumar, Member (A):

This R.A. has been filed by the review applicant against the order passed in OA No.2979/2012 on 27.01.2014, a copy of which was issued to the applicant on 30.01.2014. The R.A. was filed on 25.03.2014 with MA No. 1126/2014 praying for condonation of delay in filing the R.A.

2. In this R.A. the applicant has assailed the order passed in the OA, which was allowed in part, and it was ordered for 50% back wages to be paid to the applicant, even though he had not been re-engaged, and he did not perform any teaching work whatsoever in the concerned period. The applicant has tried to state that this order is in violation of the judgment of the Delhi High Court in W.P. (C) No.2677/2012 **GNCTD & Ors. vs. Mithilesh Swami** dated 08.04.2013. He has tried to argue that the Tribunal has passed the order in OA contrary to the principles of law as decided by the High Court. He has further cited the Supreme Court judgment in the case of **Lucknow Development Authority vs. M.K. Gupta (1994) 1 SCC 243**, and prayed that that judgment should also be made applicable to this case, when financial loss is suffered due to inaction and negligent action of public servants. In this context, the review applicant has, in Para-10 of the Review Application, stated as follows:-

“10. That it is relevant to state that the law of the country binds judicial functionary also properly and effectively by judicial functionaries and if they commit negligence, disobedience of law of land or loss to anybody while functioning as public servant, the said public servant shall also be liable for legal action under Sections 2.16 of the contempt of courts act, 1971, section 219, of the Indian panel code and other relevant laws which punishes the judicial functionaries also for committing illegalizes and mistake of law deliberately and without any rhyme and reason. However, this statement is made on behalf of the applicant or by the applicant without having any malice or illegal motive against the Hon’ble Tribunal but the statement is made to guard the functionaries of the judicial authorities in accordance with the law of land and not contrary to the law of the land and hence this statement should not be taken as malafide statement, doubting the bonafide intention of the applicant in this case against the Hon’ble Tribunal”.

3. In the result, the review applicant has prayed for this Tribunal to review its order dated 27.01.2014, and to hold that the applicant would be eligible for full back wages from 01.06.2010 to 16.02.2012, even though he was not re-engaged at all, and did not do any teaching work in this period, as per the law laid down by the Delhi High Court in **Govt. of NCT of Delhi vs. Mithlesh Swami** (supra).

4. In MA No.1126/2014 praying for condonation of delay in filing this Review Application, various grounds have been taken, and it was stated that the delay of about 13 days in filing of this R.A. was neither deliberate nor willful. When objection was taken by the Bench to the various offensive averments made in Para 10 of the Review Application on 28.04.2014, the following order sheet was recorded on that day:-

“In this particular Review Application, the OA was argued by learned counsel Shri Kartar Singh and the Review Application has also been filed by the same counsel, but he is not present in the Court Hall today. Learned counsel Shri K.K.Jha ‘Kamal’ has instead appeared before us. It is noticed that in Para-10 of the Review Application, certain averments have been made, which are derogatory, and are in the nature of being scandalous, and in the nature of trying to threaten and intimidate the Tribunal.

2. Learned counsel Shri K.K.Jha ‘Kamal’, who has stated that he is appearing on behalf of learned counsel Shri Kartar Singh, submits that the Tribunal does not know the law, as laid down by the Hon’ble High Court and the Hon’ble Apex Court, and when it was being dictated to be so recorded, then he said he did not say so, and had only said that this Tribunal had failed to apply the law.

3. He also said that though he holds no Vakalatnama from the Review Applicant, but he has been authorized by the said Shri Kartar Singh, learned counsel for the Review Applicant, to argue this R.A. on his behalf, although he is not a

designated senior counsel, and nor has he filed his own Vakalatnama in this case from the Review Applicant.

4. It is trite that the Review Application must normally be filed and argued by the same counsel who had appeared in & argued the Original Application, unless he has been discharged by the Applicant of O.A./R.A., or has sought permission of the Tribunal not to appear in a case and has sought to be discharged.

5. In view of the provision of Rule 61 of the Central Administrative Tribunal Rules of Practice, 1993, no legal practitioner shall be entitled to appear and argue before this Tribunal, unless he files before the Tribunal a Vakalatnama in the prescribed form, duly executed by or on behalf of the party for whom he appears. However, a legal practitioner, who has filed the Vakalatnama, engages or nominates another legal practitioner to appear and argue his client's case, but not to act for the client. Such permission can be granted by the Tribunal. For easy reference, Rules 61 and 63 of the Central Administrative Tribunal Rules of Practice, 1993, are reproduced below:

“61. Appearance of legal practitioner – Subject as hereinafter provided no legal practitioner shall be entitled to appear and act in any proceedings before the Tribunal unless he files into Tribunal a Vakalatnama in the prescribed form duly executed by or on behalf of the party for whom he appears.

63. Nomination or engagement of another legal practitioner – Where a legal practitioner who has filed the vakalatnama engages or nominates another legal practitioner to appear and argue his client's case but not to act for the client, the Tribunal may permit such other legal practitioner to appear and argue.”

6. Normally, we could have permitted Shri K.K.Jha 'Kamal' to represent the applicant, but since, at the first place, in the review proceedings, the counsel in the original proceedings needs to take the responsibilities to support the averments of the Review Application, and secondly the averments made in Para-10 of the Review Application being derogatory in nature, it is all the more necessary that the counsel, who addresses the Court, needs to take the responsibility for the same as filed, or the same documents, in writing.

7. Since Shri K.K. Jha 'Kamal' has not filed any 'Vakalatnama', nor does he have any "Nomination" or "Engagement Letter" for having been authorized by the learned counsel for the Review Applicant, we are not further

recording or taking notice of the other submissions made by him. At last, learned counsel Shri K.K.Jha 'Kamal' submits that he himself does not want to appear before this Tribunal in view of such circumstances, and has walked away from the Bar.

8. Therefore, giving one more opportunity to the learned counsel for the Review Applicant, Shri Kartar Singh, to advance his arguments in this case properly, the R.A. is adjourned to 19.05.2014".

5. Later on, on the next date of hearing on 19.05.2014, the learned counsel for the review applicant, who had drafted the R.A., had himself appeared, and had sought permission to file an application for making amendments to the R.A. The amended R.A. was thereafter filed on 30.06.2014, through M.A. No.1814/2014. Notices were issued in the said MA on 02.07.2014. After many adjournments having been sought by the counsel for either side, the MA No.1814/2014 was ordered to be allowed on 26.02.2015, and the amended R.A. was taken on record. In this amended R.A., the above mentioned Paragraph-10 of the original R.A. as filed earlier had been deleted.

6. The respondents filed their reply on 29.10.2014 and submitted that there is no error apparent on the face of the record, or discovery of any new material, which was not available with the review applicant, despite due diligence, at the time of final hearing of his case, and this R.A. merely seeks to re-argue the matter, which is legally not permissible. It is also submitted that there is no error apparent on the face of the records, because in Paragraphs 11 to 14 of its order, the Tribunal has taken note of the arguments of the Counsel for both sides, and then

arrived at the decision, which is perfectly legal, and, therefore, the present application for review of the order is devoid of any merit.

7. It was further submitted that the Tribunal had rightly taken notice of the judgment of Delhi High Court in both **Govt. of NCT of Delhi & Ors. vs. Mithilesh Swami** (supra) and **Govt. of NCT of Delhi vs. Ajit Kumar** (supra) cited by the respondents, and had allowed the OA in part, ordering that while for the period from 01.06.2010 to 08.12.2010, i.e., one day prior to the date the applicant's first OA had been allowed, he will be entitled only to the normal pension, but for the period from 09.12.2010 to 16.02.2012, the date prior to the passing of the order of his re-engagement dated 17.02.2012, he would be eligible for 50% back wages, even though he was not at all re-engaged, and did not perform any teaching work in that period, following the law as laid down by the Hon'ble Delhi High Court in **Govt. of NCT of Delhi & Ors. vs. Mithilesh Swami** (supra).

8. The review applicant thereafter filed a rejoinder on 27.11.2014, once again repeating his contentions as made out in the revised R.A., and submitting that the ratio of **Mithilesh Swami's** case (supra) had not been adopted by the Bench in the present matter, and that in fact he was eligible for full back wages for the aforesaid period, as already stated above.

9. The respondents thereafter filed another additional affidavit on 08.04.2015, submitting that when the review applicant was re-employed

on 17.02.2012, his pay was fixed vide order dated 15.03.2012, and the delay was not intentional, and had even been taken note of by this Tribunal in Para-12 of the order dated 27.01.2014.

10. It was also further submitted that in the present case, the review applicant was actually working as a Guest Teacher w.e.f. August 2010 till March 2011, which he had deliberately chosen not to disclose, and, therefore, for this reason also, the applicant cannot in any manner claim parity with **Mithilesh Swami's case** (supra), and demand full back wages. They submitted that rather he is not entitled for even 50% back wages for the overlapping period, as the payment made to him while he was working as a Guest Teacher had to be adjusted/withdrawn. They had provided the proof of payments made to the review applicant as a Guest Teacher through Annexure-1 of this additional affidavit.

11. The review applicant had thereafter filed a reply to this Additional Affidavit on 28.09.2015, and stated that though he could not mention the fact of his employment as Guest Teacher, but that omission was in good faith, and rather it was the respondents, who were negligent in filing their reply in OAs No. 1834/2010 & 2979/2012, and the present RA No.78/2014, for not disclosing this fact earlier. It was pleaded that this plea of the respondents at this stage is barred by res-judicata.

12. It was further submitted that the department has power to recover the over/excess payment, if any, to any employee, and if the honorarium was received by the Review Applicant as a Guest Teacher, then he had no

objection to, and the department is fully competent to, recover the same from the review applicant.

13. Thereafter, he had cited certain other disposed of and pending cases before this Tribunal. It was also submitted that the Principal concerned had told the review applicant that the honorarium paid as a Guest Teacher is not part of re-employment, and that his salary will be fixed as per Court order later on.

14. It was further submitted that it was strange that on the one hand respondents have stated that the review applicant did not work as a teacher at all, and on the other hand they have now stated that he had worked, and he was paid honorarium as a Guest Teacher from 03.09.2010 to 03.03.2011. Thereafter, the review applicant had repeated his contention that he was entitled to full back wages as per the decision of **GNCTD vs. Mithilesh Swamy** (supra).

15. Heard. During the arguments learned counsel for the review applicant put forward his case along with the lines of the pleadings as discussed in detail above. For the respondents Shri N.K. Singh, appearing for Mrs. Avnish Ahlawat, submitted the judgment of Delhi High Court dated 17.09.2014 in **C.K.P. Naidu vs. Govt. of NCT of Delhi & Ors.** W.P. (C) 822/2014 with W.P. (C) No.756/2014 **Govt. of NCT of Delhi & Ors. vs. C.K.P. Naidu**, in which it was held by the High Court that this Tribunal was right in observing that the decision in **Union of India & Ors. vs. K.V. Jankiraman, (1991) 4 SCC 109** was not

applicable to the facts of that case, since the said decision of the Supreme Court deals with the case of an employee, and not one who is seeking re-employment. Therefore, the order passed by the Tribunal in OA No.708/2013 dated 07.11.2013 had been upheld by the Delhi High Court, and back-wages in respect of re-employment had been totally denied in that case.

16. We have also seen that the same Bench had decided the TAs No. 28/2012 with 29/2012, 30/2012 & 31/2012 on 09.10.2013. In passing the Order, this Bench had taken notice of **Govt. of NCT of Delhi vs. Mithilesh Swami** (supra), and after discussing the entire case law, in Para-5, in the operative paragraph of the common order in those four TAs, this Bench had held as follows:-

“5. In view of the aforementioned, OAs (sic.T.As) are disposed of with direction to respondents to consider the applicants for their re-employment as PGT with all consequential benefits. In the event, the applicants are found fit for such appointment and joined as re-employed PGT, they may be given compensatory allowance equivalent to 20% of the emoluments which they could have drawn as PGT during the period they could not avail the benefit of the Scheme. No costs”.

17. That matter had been carried before the Delhi High Court in **R.K. Bhardwaj and Ors. vs. New Delhi Municipal Council & Ors.** W.P. (C) No.561/2014, which has since been decided on 25.07.2014. In the operative Paragraph-21 and 22 of its judgment, the High Court has upheld the payment of 20% of the emoluments for the period of re-employment eligibility, which had been granted to the applicants of those four TAs, for the period during which they had not worked.

18. The High Court having upheld even the grant of 20% of the emoluments in the case of **R.K. Bhardwaj and Ors. vs. New Delhi Municipal Council & Ors.** (supra), and having even upheld the denial of any back wages whatsoever for the period prior to the date of re-employment in the case of **C.K.P. Naidu vs. Govt. of NCT of Delhi & Ors.** (supra), it cannot be said that the order passed by this Bench in OA No.2979/2012 on 27.01.2014, granting 50% back wages, which is now sought to be reviewed, suffered from any apparent errors or defects whatsoever, necessitating for it to be reviewed.

19. Even otherwise, the powers of review of this Tribunal are quite limited, and a review applicant cannot be allowed to file an appeal in the guise of a review application. 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..**

20. 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".

21. In ***Ajit Kumar Rath Vs. State of Orissa*** (1999 (9) SCC 596), the 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."

22. Further, in **Union of India v. Tarit Ranjan Das, 2004 SCC (L&S) 160** and in **Subhash vs. State of Maharashtra and Another, AIR 2002 SC 2537**, it was categorically held by the Hon'ble Apex Court that in the garb of 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 an error apparent on the face of the record. We are bound by the Apex Court judgments cited above.

23. Lastly, it may be noted here that it has since been held that there being no provision in Rule 17 of the C.A.T. (Procedure) Rules, 1987, for any prayer being made, and entertained by the Tribunal, for condonation of delay in filing a Review Application, and the language of the said Rule 17(a) being clear and unambiguous, no delay in filing of a Review Application can either be considered or condoned by this Tribunal. Therefore, the M.A. No.1126/2014, praying for condonation of the delay in filing this R.A., itself cannot lie. As a result, the M.A. No.1126/2014 is rejected, and this R.A. is, therefore, liable to be rejected on the ground of delay also.

24. In view of the above clearcut and unambiguous position of the law, the Review Application No.78/2014 is rejected, both on merits, as well as on the ground of delay and laches.

(A.K. Bhardwaj)
Member (J)

(Sudhir Kumar)
Member (A)

cc.