

Central Administrative Tribunal
Principal Bench: New Delhi

RA No. 91/2015
in
OA No.2339/2004

Reserved on: 11.05.2016
Pronounced on: 12.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Dr. B.N. Mittal through LRs

1. Dr. Krishna Mittal
R/o B-195, Ground Floor,
C.R. Park, New Delhi -110019.
2. Mr. Deepak Mittal,
R/o B-195, Ground Floor,
C.R. Park, New Delhi -110019.
3. Mr. Amit Mittal
R/o 304, Orchid Fantasy Garden,
2nd Main, 4th Cross, Kasturi Nagar,
Bangalore – 560043. ...Review Applicant

(By Advocate: Ms. Tamili Wad)

Versus

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi. ...Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R

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

The instant review application has been filed against the Tribunal order dated 27.02.2015 in OA No. 2339/2004 refusing to quash and set aside the order bearing No.13011/

21/97-Vigilance dated 9th July, 2004 passed by the respondents.

2. For the sake of clarity, the relief(s) made in the OA are being extracted hereunder:-

“8.1 Call for the records of the case;

8.2 Quash & set-aside the order bearing No.13011/21/97-Vigilance Dated 9 July 2004, passed by the respondents as illegal, arbitrary, malafide, untenable, without jurisdiction with all its consequences;

8.3 Quash & set aside the impugned order bearing No.13011/21/97/ Vigilance Dated 9 July 2004, (amongst others) with all consequences;

8.4 Declare the action of the respondents in withholding the consequential benefits, accruing to him, including the entire retiral benefits, and entire gratuity, and other related benefits, as admissible to him, as illegal and therefore, directions be passed to them to release all consequential benefits to the applicant;

8.5 Allow costs of application;

8.6 Pass any other order(s), which this Honble Tribunal may deem just & equitable in the facts & circumstances of the case.”

3. The review applicant (now deceased) through his L.Rs has made the following prayers in the instant reviews application:-

“a) Review/recall its order dated 27.02.2015 in OA No.2339 of 2004 and notify the case for fresh hearing.

b) pass such further or other order(s) as this Hon’ble Tribunal may deem fit and proper in the facts of the given case.”

4. The facts of the case, in brief, are that while the applicant posted as Deputy Director General (Leprosy), later designated as Addl. DG, he was charged with having entered

into a criminal conspiracy with a private firm and rejected the bid from the lowest bidder for supply of medicines while the order was placed with the sixth lowest bidder in respect of a sum of Rs.9 crores. He thereby failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant. The applicant made a repeat order in respect of the same firm on 07.05.1996. For the sake of greater clarity, the Articles of charge are being reproduced hereunder:-

“Article-I

Dr. B.N.Mittal, while working as Deputy Director General (Leprosy), later designated as Addl. DG (since retired), failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant in as much as he entered into a criminal conspiracy with a private firm namely M/s International Pharmaceuticals Ltd., Ahmedabad to defraud the public exchequer.

Dr. B.N.Mittal rejected the lowest bidder on an untenable ground and the order was placed on the sixth lowest bidder. The difference in the quoted price between the lowest bidder and the sixth lowest bidder was Rs. 9 crore.

Article-II

Dr. B.N. Mittal, while working as Deputy Director General (Leprosy), later designated as Addl. DG (since retired), failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant in as much as he placed a repeat order on the basis of an artificially projected urgency.

Article-III

Dr. B.N. Mittal, while working as Deputy Director General (Leprosy), later designated as Addl. DG (since retired), failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant in as much as he signed the repeat order on 7.5.96, while, from the official records, it has been verified that he was on earned leave on that date.

Dr. Mittal issued a Project Authority Certificate on 12.6.96 while from the official records, it has been verified that he was on commuted leave on that date.

By his aforesaid act, Dr. B.N. Mittal has exhibited lack of devotion to duty. The action of Dr. B.N. Mittal has resulted in a loss of precious revenue to the public exchequer and a concomitant wrongful gain to a private firm contravening thereby the provisions of rules 3.1 (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.”

5. The Bench of this Tribunal disposed of the applicant's OA in the following manner:-

“23. In the circumstances, we deem it appropriate to dispose of the Original Application with the view that in the event the criminal case culminate with acquittal of the surviving accused, the disciplinary authority should reconsider the penalty order keeping in view the advice of the CVC regarding article 2 of the charge. It is made clear that in the event after reconsideration by the disciplinary authority the impugned order of penalty is not altered, the same would be operative with effect from the date it has been passed. Our such view is in conformity with the Order passed by the High Court of Judicature at Bombay (Nagpur Bench) in National Small Industries Corporation Ltd. & others v. Uttamkumar (Writ Petition No.1739/2013) decided on 17.4.2013 wherein it has been viewed thus:-

“5. As we have noted above, the Central Administrative Tribunal in the impugned judgment has found that the Disciplinary Authority has not agreed with the findings of the Enquiry Officer. The Disciplinary Authority has right to differ with the Enquiry Officer, but then it has to record its reasons therefor and a show cause notice is required to be served on the delinquent and he is needed to be given an opportunity. Thereafter only, the Disciplinary Authority can find out correctness of the findings recorded by the Enquiry Officer and relevance of those findings qua the charges as levelled. The afore-said procedure is not followed in the instant matter.

6. It is settled law that merely because the enquiry is found to be vitiated, relief cannot be given in all cases. The enquiry needs to be started again from the stage at which the defect crept in. Here we find that the defect has cropped up at the stage of consideration of Enquiry Report by the Disciplinary Authority. Hence, we direct the Disciplinary Authority to serve proper show cause notice upon the present

respondent calling upon him to submit his explanation on its views about the findings recorded by the Enquiry Officer and after giving him an opportunity to submit his explanation on the same, to proceed further in accordance with law.

7. The show cause notice, accordingly, shall be served upon the respondent within a period of six weeks from today. The respondent shall submit his reply to it within a further period of three weeks. The Disciplinary Authority shall, thereafter, pass appropriate final orders within a further period of three weeks. If the orders of punishment of compulsory retirement are again passed, the said order shall relate back to the date on which the original order of punishment has been passed i.e. 7.9.2007. In other words, the doctrine of relation back shall come into force in that event".

24. Ordered accordingly. No costs."

6. The review applicant has adopted the following grounds for review of the Tribunal's order dated 27.02.2015:-

- (i) The review applicant submits that the deceased employee was not alive on 27.02.2015 i.e. the date of the order and that being so, no criminal proceedings, if any, which remained inconclusive during his life time could have continued after his death on 18.03.2014. Hence, the Tribunal has erred in directing the disciplinary authority to reconsider the penalty order in the event the criminal case was to culminate with acquittal of the surviving accused;
- (ii) The review applicant further submits that deceased employee did not impugn the penalty order by relying on the criminal proceedings initiated against

him nor was it contended that the charges contained in the Memorandum of Charges were dependent upon the investigation report. It was also not contended that criminal proceedings based on identical facts are under investigation. Hence, such a direction could not have been given by the Tribunal;

- (iii) It was contended in the third place that the charge of criminal conspiracy did not form part of Articles of charge/Statement of Imputation in Memo dated 14.12.1999 and the disagreement note dated 18.06.2003.

7. The review applicant has drawn our attention towards the noting dated 11.02.2004 at page 82 of the official file wherein it has been mentioned as under:-

“the facts of the case have been examined in the light of CBI report, which is virtually a closure report.....”

Since the penalty order dated 09.07.2004 has not been set aside by the Tribunal and till so long as it continues in place and force, no consideration of the decision is possible by the disciplinary authority.

8. The respondents have filed a counter affidavit wherein it was intimated that a chargesheet has been registered by the CBI filed in RC No.AC X 2001 A 0001 dated 21.09.2001.

Learned counsel for the respondents fairly admitted that the enquiry officer had exonerated the deceased employee of all the three charges. However, the disciplinary authority had issued a note of disagreement stating that the matter could only have been concluded once the CBI had completed its investigation. It has been further stated by the respondents in respect of Article-I of the Charge that the deceased employee had projected the requirement far in excess. Had the requirement been correctly projected then he would not have placed the order the way he did. Moreover, the deceased employee had delivered the order to the supplier by hand. But, when the real picture was drawn out by one Dr. Chauhan, the respondents were compelled to cancel the order. These facts did not find mention in the report of the enquiry officer. Even in respect of Article-II of the charge, there was nothing to establish that the deceased employee had been on leave on that particular day.

9. Learned counsel for the respondents submitted that the plea of the deceased employee that he had been admitted to hospital has not been corroborated by records. On the other hand, it was incumbent upon the deceased employee to have made correct position and not to make the repeat order with enhanced requirement. The respondents have also referred to the advice tendered by the CVC and submitted that while

the case was under examination with the Commission, the CBI vide its letter dated 24.11.2003 submitted a self-contained note in respect of the case referred to it against the deceased employee along with others stating that the charges could not be established during the course of investigation.

10. Learned counsel for the respondents further submit that at the time of imposition of penalty, the facts of the case were within the knowledge of the competent authority and the penalty was imposed upon the deceased employee on Articles-I and II of the charges relating to the disciplinary proceedings initiated against him. The respondents further submit in their counter reply and also during the course of hearing that the charges had been proved against the deceased employee independent of the CBI case, as the burden of proof in departmental proceedings is much lighter. Moreover, the deceased employee was one of the accused in the criminal case before imposition of the penalty in the disciplinary proceedings. In respect of charge of repeat order, the respondents have repeated that the MOS had enhanced the order from 25% to 50% of the original order i.e. above the recommendation of the deceased employee. Thus, the respondents submit at page 15 of the counter affidavit that '*as the investigation in the criminal case against*

Dr. B.N. Mittal had already been concluded by CBI and the disciplinary authority being aware of it had imposed the penalty in the disciplinary case in consultation with the UPSC, there is apparent error on face of order/judgement dated 27.02.2015 of this Tribunal whereby this Tribunal has directed the respondents to review the findings on Article-II of the charge, however, the accused (Dr.B.N. Mittal) has since expired'.

11. The scope of review is indeed limited. A case cannot be re-argued in the garb of review application. In this regard, the issue has been comprehensively dealt with by the Hon'ble Supreme Court in the case of **State of West Bengal and Others versus Kamal Sengupta and Another** [2008 (8) SCC 612], operative part whereof is extracted 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 take note of the fact that the power of the Tribunal in exercise of its review jurisdiction is confined to such cases only where an error is plain and apparent on the face of the order and the Tribunal cannot re-examine the issue as held by the Hon’ble Apex Court in ***Subhash versus State of Maharashtra & Another*** [2002 (4) SCT 608 (SC)].

13. From the above, it is apparent that no disguised appeal can be entertained or re-argument of original case can take place in the form of a review application. Hence, we propose to limit ourselves only to errors apparent on face of record.

14. In the facts and circumstances of the case, we find that error exists on the face of record i.e. the CBI in its investigation has exonerated the accused deceased employee. Moreover, the accused was not alive on the date of passing of the order by the disciplinary authority. Hence,

no order could have been made for investigation of CBI to conclude. This is an error apparent on face of the Tribunal's order under review. We also notice that the order for re-consideration had been given without having quashed the order of penalty dated 09.07.2004. It has to be well admitted that review could not have been undertaken till so long as the order of penalty stood on record.

15. It is well admitted fact that even if there is a single apparent error, the entire proceedings get vitiated. Without wasting many words, we simply find that there are errors apparent on face of record and, as such, the instant review application succeeds and accordingly our order dated 27.02.2015 stands recalled. As prayed, OA No.2339/2004 shall come up for hearing 30.08.2016.

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

(V. Ajay Kumar)
Member (J)