

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI**

**R.A. No.132/2012
IN
O.A. No.586/2011**

New Delhi this the 25th day of April, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Mr. Narender Kumar Sharma
s/o Mr. Janak Raj Sharma
r/o Village Pubowal, Tehsil Haroli
Distt. Una (HP). ...Review Applicant

(Argued by: Mr. M D Jangra, Advocate for Mr. M K
Bhardwaj, Advocate)

Versus

Union of India & others through

1. The Secretary
Ministry of Defence
South Block, New Delhi
2. The Director General (EME)
Defence Headquarter, Raja Ji Marg
New Delhi
3. The Station Commander
Station Head Quarter
Delhi Cantt., Delhi-10
4. The Commander
Base Workshop Group
Meerut Cantt. Meerut
5. The Commandant
505 Army Base Workshop
c/o 56, APO, Delhi Cantt. ..Respondents

(By Advocate: Mr. R N Singh)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The crux of the facts which is relevant to decide the instant Review Application(RA) is that initially applicant, Narender Kumar Sharma filed the Original Application (OA) No.586/2011 to quash the impugned orders dated 09.07.2009 and dated 31.12.2010 of the Appellate Authority and to reinstate him in service with all consequential benefits including arrears of pay.

2. Having completed all the codal formalities, the OA was dismissed being found devoid of merit by virtue of order dated 30.10.2012. The operative part of the said order is as under:-

“4. We are of the opinion that the applicant has not taken interest in participating in the inquiry against him in spite of having knowledge of the same. He seems to have scant regard for the rules and to attend to his work. On the ground that his wife has filed court cases against him and that he has been harassed, he has remained willfully absent from duty for 248 days and accordingly he has been punished by the disciplinary authority. We are also satisfied that the order of the appellate authority dated 31.12.2010 has taken into consideration all the points raised by the applicant and finally came to the conclusion that no interference in the punishment meted out to him is called for. Accordingly, the applicant has failed to make out a case in his favour. OA is accordingly dismissed as being devoid of merit. No costs”.

3. Now the applicant has preferred instant RA to review the order of this Tribunal passed in OA No.586/2011 on 30.10.2012 on the following grounds:-

“A. Because the Ld. Tribunal could ignore that in reply to MA No.2228/2011, the respondents have categorically mentioned that the notice sent by I.O. vide letter dated 11.8.2008, 9.9.2008 and 17.10.2008 were returned undelivered. Once the I.O. admitted that the service was not affected on the applicant, he should have either resorted to alternate of service or was required to close the proceedings for want of service. Since the I.O. proceeded without service, therefore, the report prepared by said I.O. could not have been treated as report as per Rule 14 of CCS (CCA) Rules, 1975. As such, the order passed on the said report was required to be set aside on that account alone.

B. Because the Ld. Tribunal could ignore (sic) that while allowing 1st OA No.3203/2009, it has been categorically recorded that inquiry was not conducted as per rules against the applicant and the appellate authority was required to examine the case in the light of said findings. However, while dismissing the OA the said major ground has been completely ignored and same resulted in error apparent on face of record.

C. Because the Hon’ble Tribunal could ignore (sic) that non-consideration of grounds as raised in the OA would be (sic) treated as an error apparent on the face of record and would require adjudication of all grounds in review.

D. Because the Hon’ble Tribunal has completely ignored the fact that even the report as made basis to punish the applicant is not even a report as per Rule 14 (23) of CCS (CCA) Rules, 1965. In fact, the I.O. has not recorded any finding regarding misconduct of applicant. None of the charges have been held to be proved. Recently, the Hon’ble Supreme Court has held that the deliberate employee cannot be punished merely on the ground of absence unless and until it is proved during proceedings that the said absence was willful and deliberate. A perusal of disciplinary proceedings conducted in case of applicant makes it clear that the no finding regarding willful disobedience have been recorded.”

4. On the basis of the aforesaid grounds, the applicant has sought review of the order in the manner indicated hereinabove.

5. The respondents refuted the prayer of the review applicant and filed the reply wherein it has been pleaded that the RA is misconceived, misleading and not maintainable inasmuch as it did not disclose any reason or ground established under the law as provided and stipulated in Order 47 Rule 1 of the CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985. It was submitted that Hon'ble Supreme Court has deprecated filing of the RA outside the purview of legal provision. It was also pleaded that after hearing the learned counsel for the parties and perusing the record, the OA was dismissed being devoid of merit by this Tribunal and no ground for review has been made out. The respondents have stoutly denied all other allegations contained in the RA and prayed for its dismissal.

6. Controverting the allegations contained in the reply and reiterating the grounds of RA, the review applicant has filed the rejoinder.

7. After hearing the learned counsel for the parties and going through the record, we are of the considered view that there is no merit in the present RA.

8. What cannot possibly be disputed here is that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed or **made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that the scope for 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 and re-hearing of the matter to facilitate a change of

opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parson Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.***

9. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612.*** Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

"(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”.

10. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA neither the review applicant has pleaded nor urged any error on the face of record warranting a review of the previous order dated 30.10.2012 (Annexure RA-1) of the issues now sought to be urged were subject matter of OA and have already been adjudicated upon by the Tribunal. Therefore, no ground much less any cogent ground has been made out that could warrant review

of the order and hence the RA deserves to be dismissed.

11. In the light of the aforesaid reasons, as there is no merit, the RA is dismissed. No costs.

(K.N. SHRIVASTAVA) (JUSTICE M.S. SULLAR)
MEMBER (A) MEMBER (J)

Rakesh