

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

R.A. No.260 of 2015
IN
T.A. No.06 of 2012

Orders reserved on : 14.09.2018

Orders pronounced on : 19.09.2018

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

1. Delhi Transport Corporation,
Through its Chairman
I.P. Estate, New Delhi.
2. Depot Manager,
Yamuna Vihar Depot,
Delhi-53.

....Review Applicants
(respondents in original *lis*)
(By Advocate : Mrs. Aarti Mahajan with Ms. Swati)

VERSUS

Shri Mohar Singh,
Son of Shri Kalondi Rami,
Resident of H.No.L-21/1-A,
Jai Prakash Nagar,
Gali No.5, West Chora,
Shahdara, Delhi.

.....Review Respondent
(applicant in original *lis*)

(Review Respondent in person)

O R D E R

Ms. Nita Chowdhury, Member (A):

R.A. No.260 of 2015

Heard learned counsel for the review applicants and
review respondent, who appeared in person.

2. This is an application filed by the original respondents in the OA under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 read with Order XXXXVII Rule 1 and Section 114 of CPC seeking review of the order dated 8.2.2012 passed in OA-TA 06/2012. The operative part of the said Order reads as under:-

“3. In view of the above, without making any observation in the matter relating to the issuance of the High school certificate, because the same is pending before the Hon’ble High Court, with the consent of both parties we direct the respondents that the applicants be given his retiral benefits, as per rules and regulations, on the post of Conductor, i.e. the post on which he was working before he was promoted. This shall be done by the respondents within a period of two months from the date of receipt of a copy of this order.”

Along with this RA, the review applicants have also filed MA 3285/2015 in RA 260/2015 in TA 06/012 seeking condonation of delay.

3. In support of the said delay condonation application, learned counsel for the review applicants submitted that they filed RA against the Order dated 24.3.2014 passed in TA 6/2012 on 4th July 2014 and there is delay of two months and few days which was due to the fact that the said Order was considered by the Legal Finance Committee and instead of at the first stage challenging the same before the Hon’ble High Court since there was an error apparent on the face of record, as this Tribunal while adjudicating the TA had

proceeded on wrong facts as submitted by the original applicant and thereafter the Review Application was prepared and filed on 4.7.2014 itself but due to certain objections raised by the Registry of this Tribunal the same was lying under objection and the same was returned by the Registry to the counsel on 29.9.2014 and thereafter the same was lying under the file of some other matter. When departmental representatives enquired about the status of the review application, it was found that the same returned by the Registry under objection and thereafter it was traced under some other file. Immediately objections raised by the Registry was removed and the present application of condonation of delay was prepared and filed in the Registry of this Tribunal.

3.1 Counsel further submitted that the delay in filing the Review Application is neither intentional nor deliberate but due to the reasons as explained above.

4. The review respondent has not filed any reply to this Delay Condonation Application. After noting the aforesaid submissions of learned counsel for the review applicants, this Court found that although there is a delay of two months and few days in filing the same, but the review applicants are able to show the sufficient grounds which result into allowing the Delay Condonation Application. Accordingly, the Delay Condonation Application is allowed.

5. For seeking the review of the aforesaid Order of this Tribunal passed in TA, counsel for the review applicants submitted that while adjudicating the said TA, reliance was also placed on an order passed by Hon'ble Allahabad High Court on 4.3.1998 in WPC no.4270 in which Hon'ble Allahabad High Court had directed to the Secretary, Madhyamik Shiksha Parishad U.P. Allahabad to issue High School Certificate of petitioner of examination held in 1972 bearing Roll no.40901 as the petitioner stated that he passed the said examination from Radha Krishan Inter College Hasanpur, Mathura or to show cause by filing a counter affidavit within 6 weeks.

5.1 The petitioner instead of filing contempt petition before the Allahabad High Court against non-compliance of the order dated 4.3.1998 challenging the reversion order by filing Writ Petition No.3404/2005 before the Hon'ble Allahabad High Court and the Hon'ble Allahabad High Court vide Order dated 25.1.2005 dismissed the said Writ Petition. However, liberty was granted to the petitioner to approach appropriate forum provided to him under law for redressal of his grievances. Thereafter, the applicant filed Writ Petition No.2218/2005 before the Hon'ble Delhi High Court which was dismissed on default on 3.10.2011 and the same was later on restored to its original position by the Hon'ble Delhi High Court vide Order dated 8.2.2012 and simultaneously transferred the said Writ Petition before this Tribunal in view

of the fact that service matters pertains of the Delhi Transport Corporation comes within the territorial jurisdiction of this Tribunal and after transfer of the said Writ Petition, the same was numbered as TA 6/2015 and the said TA was disposed of by this Tribunal vide Order dated 24.3.2014 with the observations as quoted above.

5.2 Counsel further submitted that this Tribunal vide Order dated 24.3.2014 issued directions to the review applicants to release applicant's retiral benefits, as per rules and regulations, on the post of Conductor, i.e., the post which he was working before he was promoted. However, the same issue was not even in the Writ Petition nor any averments and prayer has been made by him in this regard in the writ petition, which was transferred before this Tribunal, which was numbered as TA 6/2012, for adjudication.

5.3 Counsel also submitted that while examining the aforesaid Order of this Tribunal, review of which is sought in this Review Application, it is transpired that the review respondent deliberately did not bring correct facts before this Tribunal and as such the Order of this Tribunal is not based on correct facts, as the review respondent did not disclose the fact of his petition filed before the Hon'ble Allahabad High Court was disposed of on 6.12.2005 itself as a result of which the departmental inquiry should have continued and his non-production of educational certificate would render his appointment also as Conductor as illegal. Counsel drew our

attention to a copy of the status of the Writ Petition No.4720/1998 as obtained from the official website of the Hon'ble High Court of Allahabad (Annexure RA1 and RA2).

5.4 Counsel, therefore submitted that there is an error apparent on the face of record, as there was no where pleaded in the pleadings for release of retiral benefits and this Tribunal directed the review applicants to release the same.

5.5 Counsel further submitted that review respondent did not disclose the fact that Writ Petition, which was stated to be pending before the Hon'ble Allahabad High Court at the time of disposal of the TA 6/2012, was actually disposed of by the Hon'ble Allahabad High Court vide Order dated 6.12.2005. Therefore, the Order dated 24.3.2014 passed in TA 6/2012 is required to be recalled and the TA be accordingly adjudicated by this Tribunal.

6. Review Applicant has appeared in person, although the review respondent has filed his reply through his counsel to the Review Application in which he has merely stated that on the day this Tribunal decided the case, the Writ Petition before the Allahabad High Court was decided which was not in the knowledge of the review respondent and the counsel for the review respondent at Allahabad had not informed the review respondent about the disposal of the said Writ Petition, however, the respondent had requested his counsel to apply

for a certified copy of order dated 6.12.2005 for perusal of this Tribunal after receiving the present review petition.

7. After hearing the learned counsel for the review applicants and review respondent, who appeared in person, and also perusing the records of this case, this Tribunal is of the view that the review respondent has deliberately and willfully concealed the fact of disposal of his Writ-C No.4720/1998 filed by him before the Hon'ble High Court of Allahabad, which is evidently proved by the status report of the said case filed by the review applicants along with the present Review Application and the said Writ Petition was disposed of way back on 6.12.2005 and the review respondent has earlier also filed Writ Petition No.3404/2005 before the Hon'ble Allahabad High Court and after disposal of the said Writ Petition, the review respondent has also filed Writ Petition (Civil) No.2218/2005 before the Hon'ble Delhi High Court, which was transferred to this Tribunal and registered as TA 6/2012 in the year 2012. Therefore, the contention of the review respondent that his counsel at Allahabad High Court did not inform him about disposal of Writ C No.4720/1998, which was disposed of on 6.12.2005, is not acceptable and is liable to be rejected as this Tribunal disposed of the said TA 6/2012 on 24.3.2014 and if this fact has been brought to the notice of this Tribunal on that day, the fate of the said TA would have been different. As such this Tribunal is of the considered view that the review respondent

has obtained the said Order dated 24.3.2014 passed in TA 6/2012 by concealing the material facts and therefore, the said Order dated 24.3.2014 is recalled and the TA is restored to its original position. Accordingly, the present Review Application is allowed.

TA 6/2012

It is trite that a judgment or decree by the first court or by the highest court obtained by playing fraud on the Court is a nullity and non est in the eye of the law as held by the Hon'ble Apex Court in the catena of cases, some of which are **S.P. Chengalvaraya Naidu v. Jagannath** (1994) 1 SCC 1, and **India Household and Healthcare Ltd. v. LG Household & Healthcare Ltd** (2007) 5 SCC 510.

2. From the pleadings also, we found that the said Order dated **6.12.2005** passed by the Hon'ble Allahabad High Court in Writ C No.4720/1998 has not been placed on record by the review respondent even with the counter affidavit filed to the present Review Application on **5.12.2016** and even till the date when this matter was heard and reserved for orders.

3. As such in view of the above, for the foregoing reasons, the present TA is dismissed accordingly. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

/ravi/

(Nita Chowdhury)
Member (A)