

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

REVIEW APPLICATION NO.200/00026/2015
(in OA No.972/2012)

Jabalpur, this Monday, the 14th day of May, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

- 1.** Union of India through Secretary, Ministry of Environment & Forests, New Delhi 110001.
- 2.** Director General, Indian Council of Forestry Research and Education, P.O. New Forest, Dehradun Uttrakhand- 248006.
- 3.** Director, Tropical Forest Research Institute, PO, RFRC, Mandla Road, Jabalpur 482001
- 4.** Chief Vigilance Officer, Council of Forestry Research and Education, PO New Forest Dehradun- 248006
- 5.** Inquiry Authority, Scientist 'E' TFRI, Mandla Road, Jabalpur-482001

-Applicants

(By Advocate - Shri S.K.Mishra)

V e r s u s

P.N. Mishra (deceased) through LR Somya Mishra
D/o late Dr. Shri P.N. Mishra, Aged about 30 years,
R/o H. No.9, Jalaram Bapu Nagar, Arihant Homes,
Tilhari, Jabalpur (MP)

- Respondent

(By Advocate - Shri Manoj Sharma)

(Date of reserving the order :01.05.2018)

O R D E R

By Navin Tandon, AM-

This Review Application has been filed by the applicants (original respondents) to review the order dated 22.07.2015 (Annexure RA-1) passed by this Tribunal in Original Application No.972/2012.

2. This Review Application was earlier allowed by this Tribunal at the circulation stage vide order dated 08.09.2015 whereby the order dated 22.07.2015 in OA No.972/2012 was recalled.

2.1 The respondent (original applicant) filed Writ Petition No.6925/2016 in the Hon'ble High Court of Madhya Pradesh. The Hon'ble High Court allowed the said Writ Petition vide its order dated 23.11.2016, as the Review Application was decided without hearing the respondent (original-applicant). The Hon'ble High Court quashed the order dated 08.09.2015 passed in this RA No.26/2015 and matter was remanded back to this Tribunal to decide the Review Application afresh in accordance with law after hearing all concerned.

3. Accordingly, notices were issued to respondent-original applicant.

4. Meanwhile the respondent (original-applicant) died on 28.01.2018. This fact was brought on record by filing MA No.200/00284/2018 by Ms.Somya Mishra, daughter of respondent (original applicant). Subsequently MA No.200/00448/2018 was filed by the applicants (original-respondents) to bring Ms.Somya Mishra as legal representative of deceased respondent (original applicant). This MA was allowed on 12.04.2018 in the presence of Ms.Somya Mishra.

5. This Review Application has been filed by the applicants(original-respondents) on the ground that the Tribunal in its order dated 22.07.2015

passed in Original Application No.972/2012 had considered the relieving order issued by the Director, Tropical Forest Research Institute (for brevity 'TFRI') dated 06.11.2012 as the order of disciplinary authority, whereas the order of the disciplinary authority – Director General, Indian Council of Forestry Research and Education, (for brevity 'ICFRE'), Dehradun, dated 31.10.2012 was also available on record.

5.1 The Order No.II-60/2012/CVO/ICFRE dated 31.10.2012 passed by the Director General, ICFRE, reads thus:

"Whereas a chargesheet under CCS(CCA) Rule 14 was served on Shri P.N.Mishra, Scientist 'C' Tropical Forest Research Institute, Jabalpur vide Memorandum of even number dated 12.01.2011 with the instructions to submit his written statement of defence and also to state whether he desires to be heard in person. In response, Shri P.N.Mishra neither submitted his written statement of defence nor requested for personal hearing to the undersigned.

Whereas an Inquiry Officer was subsequently appointed vide this office order of even number dated 29.12.2011 to inquire into the charges levelled against Shri P.N.Mishra. The Inquiry Officer summoned Shri P.N.Mishra and was asked to be present on the dates of hearing alongwith all the documents and proof, if any, to defend against the charges levelled against him. However, Shri P.N.Mishra simply denied the charges through his email reply but neither turned up for hearing nor produced any document/proof in his defense. The inquiry was therefore conducted ex parte. Shri P.N.Mishra also did not submit any representation in response to the Inquiry Report that was sent to him. All this establishes that Shri P.N.Mishra has nothing to say/produce in his defense. Further, as per the Inquiry Report, it has unequivocally established that the bill submitted by the charged officer was fake which was issued by M/s R.K. Travels in connivance with the charged officer. The undersigned agrees with the report of the Inquiry Officer and has no reason to deviate from it.

AND WHEREAS the undersigned having carefully gone through the chargesheet served on Shri P.N.Mishra, the report submitted by the Inquiry Officer and all other relevant documents, and with due application of mind, found Shri P.N.Mishra guilty of submitting false TA Claim, and has thereby committed an extremely serious fraud. Although, in view of the gravity of the fraud/misconduct committed by him, he deserves the award of a harsher punishment like dismissal or removal from service, yet keeping in view his long service to the Council, sad untimely demise of his wife recently and also his social commitments towards his children the undersigned takes a lenient view on humanitarian grounds and award of penalty of 'Compulsory Retirement' to him, with all pensionary benefits and other dues as admissible without any reduction.

NOW THEREFORE, the undersigned by exercising the powers conferred under CCS(CCA)Rules and ICFRE Rules, hereby imposes the penalty of 'Compulsory Retirement' on Shri P.N.Mishra, Scientist 'C' Tropical Forest Research Institute, Jabalpur, with all pensionary benefits and other dues as admissible, without any reduction, with immediate effect".

5.2 The applicants (original-respondents) have submitted that since the respondent (original-applicant) was posted at TFRI, Jabalpur, the Director TFRI passed order dated 6.11.2012 (Annexure R-1) relieving the respondent (original-applicant) from duties in compliance to the penalty order dated 31.10.2012 (Annexure R-1 colly.). The Tribunal without considering the penalty order dated 31.10.2012 passed the order dated 22.07.2015 in OA No.972/2012 only on the ground that the order dated 6.11.2012 was cryptic and non-speaking, and quashed the said order. The Tribunal in the said order also directed for reinstatement of the

respondent (original applicant) and conduct of further enquiry beginning with serving of charge-sheet to the respondent (original applicant).

6. The respondent (original applicant) on the other hand submits that the respondent (original applicant) had specifically prayed for in the relief clause for setting aside and quashment of the orders dated 06.11.2012 and 31.10.2012 by mentioning the order No.II-60/2012/CVO/ICFRE. The order dated 31.10.2012 was not available at the time of filing of the Original Application, however, the same was filed by the respondent (original applicant) by way of application for taking additional documents on record and marked as Annexure A-16 (sic A-15). At the time of hearing the Tribunal was fully aware of the whole situation and had decided to allow the Original Application No.972/2012. However, the reason given was only that it was a non-speaking order. He further argued that the applicants (original respondents) are asking a review of the order passed by the Tribunal in the Original Application, whereas they could have approached the Hon'ble High Court for quashing it.

7. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties in the present Review Application as well as in the Original Application.

8. The relevant paragraphs of the order dated 22.07.2015 passed in Original Application No.972/2012 are reproduced hereunder:

“(3). We have heard the counsel appearing on both sides and perused the record.

(4). Annexure A-1 is the impugned order. It reads as follows:

कार्यालय आदेश

महानिदेशक, भारतीय वानिकी अनुसंधान एवं शिक्षा परिषद्, देहरादून के आदेश क्रमांक II-60/2010/CVO/ICFRE, दिनांक 31 अक्टूबर 2012 के द्वारा श्री पी.एन. मिश्रा, वैज्ञानिक-सी. को अनिवार्य सेवानिवृत्ति दिये जाने के कारण उन्हें दिनांक 31/10/2012 (अपराह्न) से कार्यभार मुक्त किया जाता है।

*(5). The impugned order is a cryptic and non-speaking order without stating any reasons for passing such order terminating the services of the applicant. It is trite that giving reason is one of the fundamentals of good administration, as held by the Apex Court in *Damoh Panna Sagar Rural Regional Bank and another v. Munna Lal Jain*, (2005) 10 SCC 84. The Apex Court quoting *Alexander Machinery (Dudley) Ltd. v. Crabtree* observed in *Damoh Panna Sagar*'s case (*supra*) as follows:*

“Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.”

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

*(6). In the light of the above pithily stated position of law by the Apex Court, we have no hesitation to call Annexure A-1 by its very face a non-speaking order. It should be held that Annexure A-1 is violative of the principles of natural justice, as observed by the Apex Court in *Damoh Panna Sagar* case (*supra*). Therefore, without any further adjudication in this matter, we hereby quash and set aside Annexure A-1. The matter is remitted to the competent authority of the respondents to conduct a further inquiry beginning with serving of chargesheet to the applicant. The competent authority shall fix a time schedule for conducting the proceeding of the further inquiry. The applicant shall co-operate with the inquiry proceedings adhering to the aforesaid time schedule, without any demur. It is further directed that the inquiry proceedings shall be completed within six months from the date of receipt/production of copy of this order. A well reasoned speaking order shall be passed by Disciplinary Authority. It shall be communicated to the applicant. The applicant shall be reinstated forthwith.*

Ordered accordingly. No order as to costs”.

9. From a perusal of the above order passed by the Tribunal in Original Application No.972/2012 it is found that the Tribunal while passing the order dated 22.07.2015 has not at all considered the penalty order dated 31.10.2012 (Annexure R-1 colly.) passed by the Director General, ICFRE and only on the basis of the order dated 06.11.2012 (Annexure R-1 colly) passed the order dated 22.7.2015 in Original Application No.972/2012 and thus an apparent mistake had occurred while passing the order.

10. The Hon'ble Supreme Court in the matter of **State of W.B. Vs. Kamal Sengupta**, (2008) 8 SCC 612, while dealing with the powers of the Tribunal in the matter of review has held thus:

“(16). With a view to achieve the object underlying the enactment of Article 323-A i.e. expeditious adjudication of service disputes/complaints, the tribunals established under the Act have been freed from the shackles of procedure enshrined in CPC but, at the same time, they have been vested with the powers of a civil court in respect of some matters including review of their decisions. This is clearly evinced from the plain language of Section 22 of the Act, which is reproduced below:

“22. Procedure and powers of Tribunals.—(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall

be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or, documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter which may be prescribed by the Central Government.”

A reading of the above reproduced section makes it clear that even though a tribunal is not bound by the procedure laid down in CPC, it can exercise the powers of a civil court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) including the power of reviewing its decision.

(17). The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

“1. Application for review of judgment.—(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”

(18). *Since the Tribunal’s power to review its order/decision is akin to that of the civil court, statutorily enumerated and judicially recognised limitations on the civil court’s power to review the judgment/decision would also apply to the Tribunal’s power under Section 22(3)(f) of the Act. In other words, a tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 are available. This would necessarily mean that a tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision”.*

11. Having considered the above decision of the Hon’ble Supreme Court as well as the provisions of the Administrative Tribunals Act, since we have already held in para 9 above that there was an apparent mistake, while passing the order dated 22.07.2015 in Original Application No.972/2012, inasmuch as the Tribunal had failed to take cognizance of

the speaking order dated 31.12.2012 (Annexure R-1 colly.), this Review Application is liable to be allowed.

12. In the result the Review Application is allowed. The order dated 22.07.2015 passed by this Tribunal in Original Application No.972/2012, is recalled. Registry is directed to list the Original Application No.972/2012 for hearing on 29.06.2018, after issuing notices to both the parties.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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