

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

MA/310/00047/2017 in OA/310/01068/2014 (RA No. 10/2018)
Dated Monday the 23rd day of July Two Thousand Eighteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member (A)
&
HON'BLE MR. P. MADHAVAN, Member (J)

P.Dhayanathan,
GRC Raaj Fort,
1st Floor-1, Plot No. 37,
Kandasamy Nagar, 2nd Main Road,
Poonamallee, Chennai 600056.Applicant/Applicant

By Advocate M/s. Akbar Row

Vs

Union of India rep by
The Commissioner of Central Excise,
Chennai 35.Respondent/Respondent

By Advocate Ms. R. Hemalatha

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. This Review Application has been filed against the order dt. 16.08.2016 in OA 1068/2014 by which the Tribunal dismissed the OA having been satisfied with the explanation given by the respondents with regard to the inordinate delay that took place in issuing the charge memo against the applicant. The order of this Tribunal reads as follows:

"Eventhough the alleged incident had taken place during the period 2003-2004, the CBI investigated the case of the applicant along with the case of 23 other officers who have been recommended for penal action and charge sheet and as a result voluminous documents were submitted to the CBI, which submitted its report during 2009 to the DGV, which in turn obtained the first stage advice from the CVC on 17.3.2010 and the department received the same only on 7.4.2011. In view of the above facts and circumstances of the case, we are satisfied with the explanation given by the respondents in respect to the inordinate delay in issuing charge sheet to the applicant. The OA is dismissed. No costs. "

2. Learned counsel for the applicant would submit that the respondents had not submitted the correct facts before the Tribunal in their reply. It had been contended by them that after the CVC's first stage advice dt. 17.03.2010 had been received by them on 29.03.2010, considering a large number of officers involved in this case, the huge volume of documents such as shipping bills, invoices, export manifest dealt, it was a time consuming task for verification of the documents

pertaining to each individual. Particularly, the charged officer was previously working in Tirunelveli Commissionerate and the case file was transferred by Coimbatore Commissionerate for issuance of charge memo. The officer was transferred to Chennai Commissionerate and the case file was transferred to Chennai Commissionerate during April, 2007. After getting all the related documents from Tirunelveli/Coimbatore the entire process for issuing Charge memo was again gone through in Chennai Commissionerate and the charge memo was issued on 07.07.2014. It is submitted that the applicant was very much working in the Chennai IV Commissionerate itself in 2010 when the CVC's first stage advice had been received and the respondents unnecessarily wasted their time by sending the papers to Tirunelveli Commissionerate for no fault of the applicant. Accordingly, the decision of the Tribunal calls for a review, it is urged.

3. Learned counsel for the applicant relies on the following judgments:

- i. State of AP vs N. Radhakrishnan (CA 3503/1997 dt. 07.04.1998 of the Hon'ble Apex Court (1998) 4 SCC)
- ii. UOI rep by Secy, M/o Defence and anr vs. Registrar, CAT, Chennai and anr (WP 5147/2005 and WPMP 5670/2005)

dt. 10.03.2005 of the Hon'ble Madras High Court (2005) 2 MLJ 154)

iii. State of Madhya Pradesh vs. Bani Singh and anr (CAs no. 3045 & 3046/1988 dt. 05.04.1990 of the Hon'ble Apex Court (AIR 1990 SC 1308))

iv. Ranjeet Singh vs. State of Haryana & ors (CA no. 1491/2006 dt. 30.06.2008 of the Hon'ble Apex Court (2008 (3) CTC 781))

v. P. V. Mahadevan vs. M. D. Tamil Nadu Housing Board (CA no. 4901/2005 dt. 08.08.2005 of the Hon'ble Apex Court (2005 (4) CTC 403).

4. We have carefully considered the facts of the case. The Tribunal in its order dt. 16.08.2016 had examined the issue and was satisfied that the delay involved in the issue of the charge memo had been adequately explained and, therefore, the inquiry could be allowed to proceed. Even if it is true that the applicant was working in the Chennai Commissionerate in the relevant time and the respondents lost some time by sending the papers to Tirunelveli Commissionerate, we do not see how the delay involved of about one year in the process could be said to have resulted in any miscarriage of justice, especially when the incident pertained to 2003-2004 and the charge memo was issued in 2014. When there was already a 10 years' delay, the delay on

account of despatch of the relevant papers to the previous place of posting of the applicant could not be held as a ground for reviewing the order and to alter the conclusions arrived by the Tribunal.

5. The Hon'ble Supreme Court in a judgment in the case of *Kamlesh Verma V. Mayawati* (2014) 1 SCC (L&S) 96 after examining the Review power of the Courts under the Constitution, Criminal Procedure Code and the Civil Procedure Code summarised the principles and pointed out the circumstances under which review will not be maintainable:

"When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) **Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.**
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent of the face of the record should not be an error which has to be fished out and searched.
- (viii) **The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.**
- (ix) **Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived." (Emphasis supplied).**

6. Further, the Hon'ble Supreme Court in the case of *Ajit Kumar Rath v. State of Orissa* (1999) 9 SCC 596, has categorically held that a matter cannot be heard on merit in exercise of power of review and if the order or decision is wrong, the same cannot be corrected under the guise of power of review. Hon'ble Apex Court ruled as under:

"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. 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 fact 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 fact 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 CPC means a reason sufficiently analogous to those specified in the Rule."

7. The Hon'ble Supreme Court in another judgment in the case of *Union of India v. Tarit Ranjan Das* 2004 SCC (L&S) 160 while dealing with the order passed by the Tribunal in a review application at paragraph 13 observed as under:

"The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. **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 rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing original application. This**

aspect has also not been noticed by the High Court." (Emphasis supplied)

8. At this stage, it is submitted that the applicant was only one of the 24 persons against whom action was recommended and the inquiry had been completed against the other 23 persons who, after imposition of penalty subsequently had also been promoted. Accordingly, the respondents may be directed to complete the proceedings within a time limit set by the Tribunal considering that the applicant is now retired and the terminal benefits have been withheld.

9. We do not propose to issue any directions to the respondents in a review application which we propose to dismiss. Time limits already exist in the relevant rules/instructions for completion of various stages involved in departmental enquiry proceedings so as to conclude them expeditiously. If there is any unnecessary or deliberate delay not attributable to the charged officer, he is entitled to legal remedies.

10. RA is dismissed with the above observations. MA for condonation of delay in filing RA also stands disposed of.

(P. Madhavan)
Member(J)

(R.Ramanujam)
Member(A)

23.07.2018

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