CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

R.A. No.57 of 2019
IN
O.A. No.2542 of 2017

This the 15th day of April, 2019

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

Rabindra Prasad,
S/o Mr. Bindeshwari Prasad,
R/o Flat No. 305,
Golden Height Apartment,
Pocket-8, Sector-12, Dwarka,
New Delhi-110078

Having office at O/o PGM (N),
QA & Inspection Circle, New Delhi
Aged about 49 Group B

... Review Applicant

(None present)

VERSUS

1. Bharat Sanchar Nigam Limited,
   Ground Floor, Eastern Court Complex,
   Janpath, New Delhi-110001

2. Shri B.K.Jog
   CGM, Inspection & QA Circle
   Cum Disciplinary Authority
   Bharat Sanchr Nigam Limited,
   Jabalpur, M.P.

.... Review Respondents

(By Advocate : Shri Amit Sinha for Shri R.V. Sinha)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

None appeared for the applicant today. On previous date, i.e., 15.3.2019 also, there was no appearance on behalf of the review applicant. In view of the above circumstances, we proceed to adjudicate this matter by invoking the

provisions of Rule 15 of the CAT (Procedure) Rules, 1987. Accordingly, we heard learned counsel for the review respondents.

2. In this Review Application, the review applicant is seeking review of Order dated 14.12.2018 passed in OA 2542/2017 whereby the said OA was dismissed by this Tribunal. The grounds of review are as follows:-

(i) That by way of the O.A. being no. 2542 of 2017, the Applicant had raised an important question of law as to Whether a disciplinary proceeding be allowed to continue on the charge-sheet which has been issued on the basis of the documents, veracity of which were already questioned by way of registration of a FIR on year prior to the issuance of Charge-Sheet and the same is under investigation by the Police;

(ii) That When the documents were questioned by registration of a Cognizable case then whether the disciplinary authority should not had waited for the out come of the same before issuance of the charge-sheet on the basis of those documents;

(iii) That by way of the O.A. bearing no.2542 of 2017, the Applicant had raised another important question of law as to Whether a disciplinary Proceeding be allowed to continue in which charges are sought to be proved by the witnesses who are themselves penalized in the same case;

(iv) That element of malice and administrative bias are sufficient grounds for the quashing of the Charge-Sheet as held in ***State of Tamilnadu vs. Union of India & Ors*** (W P (C) 6117/2016) decided on 30.11.2016 by the Hon'ble High Court in the matter of State of Punjab Vs.

V.K. Khanna (2001) 2 SCC 330 and the present case is the classic example of malice and administrative bias;

(v) That even this Hon'ble Court in a number of cases including the matter of Rahul Gupta Vs Union of India & Ors. O.A. No.1756/2008 & O.A. no.1757/2008 decided on 03.02.2009 had interfered at very initial stage when the major penalty proceeding was initiated against the Appliant and was pleased to quash the same on one inter-alia other grounds of the administrative bias and delay and even in present case as well the Charge-Sheet has been issued after lapse of five years and no documents were provided by the disciplinary authority for filing of reply as in the case of Sh. Rahul Gupta still the Applicant was constrained to file reply based on his memory as by Sh. Rahul Gupta;

(vi) That Re-examination and re-consideration is permissible in review on the basis of universally accepted basic philosophy that fallibility is inherent in all human beings as held in the matter of ***Satyabrata Chakraborty vs. State of Arunachal Pradesh*** (2010) 2 Gau LR 468 (473) (DB).

3. Pursuant to notice issued to the review respondents, they have filed their reply in which they have besides giving reply raised preliminary objection to the effect that the present RA is misconceived, misleading and not maintainable in as much as the same does not disclose any reason or ground established under the law and as stipulated and provided in Order 47, Rule 1 of CPC r/w Section 22(3)(f) of the Administrative Tribunals Act, 1985. They further stated that

the Hon'ble Supreme Court has deprecated filing of the Review Application outside the purview of Order 47, Rule 1 of CPC r/w Section 22 (3) (f) of the Administrative Tribunals Act, 1985. Reliance is placed on the decision of Apex Court in the case of K. Ajit Babu and others vs. Union of India and others, reported in JT 1997(7) SC 24 and submitted that present RA is not tenable.

3.1 They also stated that by way of present RA, the review applicant has attempted to re-agitate and re-argue the issue which has been duly considered by this Hon'ble Tribunal vide its Order which is under review, as it is required for review applicant to establish clearly and specifically any error apparent on the face of the order/judgment, sought to be review and the same is missing in the application under reply. They also stated that powers of the Hon'ble Tribunal under review are only if the error is plain and apparent and the Tribunal cannot re-examine the matter as if it is an original application as held in ***Subhash vs. State of Maharashtra & Anr.***, reported in 2002 (4) SCT 608 (SC).

4. Counsel for the review respondents also submitted that review applicant has not clearly mentioned as to what is the error apparent in the order of the Tribunal which is sought to be reviewed by filing the RA. He further submitted that the scope of review is limited to correction of a patent error which stares in the face of the Order, which is sought to be reviewed

without elaborate argument being needed to establish it. In this regard, reliance is placed on the Apex Court decision in the case of ***Ajit Kumar Rath vs. State of Orrisa***, reported in 1999 (9) SCC 596.

4.1 Counsel further submitted that review applicant has not brought out any error apparent on the face of records in the order dated 14.12.2018 of this Tribunal as all the contentions raised by hi in the present review application have already been decided by this Tribunal on merits. Counsel further emphasized that the review applicant merely wants to reargue the matter in the guise of Review and hence, the Review Application is not maintainable. He also placed reliance on the decision of the Apex Court in the case of ***State of West Bengal and others vs. Kamal Sengupta and another***, (2008) 8 SCC 612 in which the Apex Court observed as under:-

> "28. 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."

4.2 Lastly, counsel for the review respondents submitted that review applicant has not brought out any valid ground for review of this Tribunal Order dated 14.12.2018 under Section 22(3)(f) of the Administrative Tribunals Act, 1985 and as such the present RA is liable to be dismissed by this Tribunal.

5. After hearing the learned counsel for the review respondents, we have carefully perused the Order under Review and have also carefully perused the Review Application. We do not find any of the grounds, as quoted above, raised in the RA comes within the ambit of provisions of review as this Tribunal in the said Order by placing reliance on the decisions of the Apex Court in ***UOI and Anr.***

Vs. Ashok Kacker reported in 1995 Suppl. (1) SCC 180; ***UOI Vs. Upender Singh*** reported in 1994 (3) SCC 357); ***UOI and Anr. Vs. Kunisetty Satyanarayana*** reported in 2006 (12) SCC 28); and ***State of Punjab & Ors Vs. Ajit Singh*** reported in 1997 (11) SCC 368), especially para 4 of the judgment of Apex Court in the case of ***Ashok Kacker*** (supra), held that it is not a fit case for interference in the departmental proceedings at this stage and even regarding malice and mala fide also the applicant can adduce evidence in the departmental proceedings.

6. So far as reliance of the review applicant on the decision of this Tribunal in O.A. Nos.1756/2008 & O.A. no.1757/2008 decided on 03.02.2009 is concerned, the same is not applicable to the facts and circumstances of the present case as the same is distinguishable on facts. In fact, the review applicant is questioning the conclusion arrived at by this Tribunal in the said Order. If we agree to his prayer, we would be going into the merits of the case again and re-writing another judgment of the same case. By doing so, we would be acting as an appellate authority, which is not permissible in review. In the case of ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma,*** [AIR 1979 SC 1047], the Hon'ble Supreme Court has observed as follows:-

> "It is true as observed by this Court in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to

> preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

Again in the case of ***Ajit Kumar Rath vs. State of Orissa and others***, 1999 (9) SCC 596, the Hon'ble Supreme Court has observed as follows:-

> "The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. 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 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 face 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 means a reason sufficiently analogous to those specified in the rule.**
>
> **Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.**"
>
> [Emphasis added]

In the case of ***Gopal Singh vs. State Cadre Forest Officers' Assn. and others***, (2007 (9) SCC 369), the Hon'ble Supreme Court observed as follows:-

> "The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

7. Thus, on the basis of the above citations and observations made hereinabove, we come to the conclusion that it was not open to the review applicant to question the decision taken by this Tribunal. In fact, he could have only pointed out any error apparent on the face of record, which has not been done in any of the above grounds taken in the Review Application rather the review applicant in the garb of present review application is trying to re-argue the whole case, which is not permissible in view of the aforesaid observations of the Hon'ble Supreme Court. As such this Review Application is devoid of merit and the same is accordingly dismissed.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/