

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1952/2010**

% **Date of Decision: 12.04.2010**

K. Narsimha Petitioner
Through Mr. Jitendra Malkan and Mr. Subham
Bhalla, Advocates

Versus

Ministry of Home Affairs & Ors. Respondent
Through Mr. A.K. Bhardwaj and Mr. Anuj
Aggarwal, Advocates for respondents
No. 1 & 2

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

The petitioner has challenged the order dated 6th October, 2009 passed by Central Administrative Tribunal, Principal Bench in OA-2731/2009 titled Sh. K. Narsimha Vs. Ministry of Home Affairs & Anr. dismissing his original application seeking quashing of suspension order dated 28th July, 2009 and orders passed continuing his suspension thereafter and against the dismissal of the review application of the petitioner being RA No. 15/2010 by order dated 1st February, 2010.

Brief facts to comprehend the controversies between the parties are that the petitioner, a public servant comes from a humble background of a family comprising of himself, his wife who is a house wife and two sons who are minors and his father was having a meager monthly income of Rs. 1200/- per month as was disclosed by him in his descriptive roll, which was filed by the petitioner at the time of joining Indian Administrative Service.

The allegation of indulging in corrupt practices and activities and misusing the assets disproportionate to his known source of income had been made against him while he was working during the period 15th September, 1991 to 19th October, 2006 as Secretary, Govt. of Mizoram. During the said period, he also acquired movable and immovable assets. During a raid on a room at hotel Tajmahal, Hyderabad which was booked in the name of the petitioner, a bag containing Rs. 50,00,000/- and a locker key were recovered and considering all the facts and circumstances, it was held that prima facie a case of commission of cognizable offence under Section 13(2) r/w 13(1)(a) of Prevention of Corruption Act, 1988 was made out and therefore, an FIR being RC 26A/2006-CBI-HYD dated 22nd December, 2006 was registered against him.

On 14th December, 2006, the respondents therefore, suspended the petitioner on the ground that a case against him in respect of criminal offence is under investigation. Later on, by order dated 9th February, 2007, the suspension was reviewed and further extended for the period of 180 days. While extending the suspension, besides pendency of a criminal case, another ground was also taken of existence of business nexus pursuant to an inquiry conducted by the Department of Revenue (Central Board of Direct Taxes), Govt. of India.

Against the orders passed for suspension of the petitioner, representations were made. However, the suspension of the petitioner has been reviewed from time to time. On 11th December, 2007, petitioner submitted a representation seeking revocation of suspension which was declined and the suspension was further extended. Lastly, the petitioner's suspension was extended by the order dated 19th July, 2009, which was challenged by the petitioner before the Central Administrative Tribunal, Principal Bench in an original application being OA No. 2731/2009, which was dismissed by order dated 6th October, 2009. Before the Tribunal, it was noticed that a case under Section 13(2) r/w Section 13 (1) (a) Prevention of Corruption Act has already been registered against the petitioner.

The suspension was challenged on the ground that the petitioner has been given discriminatory treatment inasmuch as other officers who were trapped red handed and who misused their official position were either not placed under suspension or their suspension was revoked immediately after suspension. This plea of discriminatory treatment was repelled by the Tribunal on the ground that no details of such persons who were alleged to have been discriminated viz-a-viz the petitioner were given. The Tribunal also held that even if some other person's suspension has been revoked, any illegality committed in favour of any person will not entitle the petitioner to take advantage of the same.

The contention of the petitioner that the order of suspension passed which has been extended from time to time suffered from non application of mind was also repelled. After taking into consideration, the suspension orders, it has been held that the orders categorically considered and stipulated reports submitted by CBI and Department of Revenue (CBDT), GOI and considering the seriousness of the allegation and the recommendation of CBI, the suspension order was passed which has been reviewed from time to time. Consequently, the Tribunal dismissed the original application for revocation of order of suspension by order dated 6th October, 2009.

The petitioner, thereafter, challenged the order dated 6th October, 2009 by filing a writ petition No. 13755/2009 which was withdrawn by the petitioner after arguments with liberty to approach the Tribunal seeking review of the order dated 6th October, 2009.

The petitioner, thereafter, filed a review application being RA No. 15/2010 contending, inter-alia, that the respondents have not considered the effect of OM No. 11014/4/2003-Estt (A) dated 7th January, 2004. The said review application was also dismissed by the Tribunal by order dated 1st February, 2010 consequent where to the present petition is filed challenging the order dated 6th October, 2009 dismissing the OA and order dated 1st February, 2010 dismissing the review application being RA No. 15/2010.

Relying on para-3 of the OM dated 7th January, 2004, it is contended by learned counsel for the petitioner that the said OM contemplates that the review committee may take a view regarding revocation/continuation of suspension keeping in view the facts and circumstances of the case and also taking into account unduly long suspension, while putting the employee concerned to undue hardship, also involves payment of subsistence allowance without the employee performing any useful service to the Government. The OM also stipulates that without prejudice to the foregoing, if the officer has been

under suspension for one year without any charges being filed in a court of law or no charge memo has been issued in a departmental inquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case, the officer is accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned. The learned counsel for the petitioner contended that the review application has been dismissed mechanically by circulation without considering the OM relied on by the petitioner.

The last order of suspension dated 28th July, 2009, which was impugned by the petitioner categorically considered regarding recovery of a large amount of cash from the suit case of the petitioner, i.e., 3 lacs and an amount of Rs. 17.2 lacs from his locker when the petitioner was staying in a Hotel at Hyderabad. The allegations against the petitioner were serious in nature. On considering the report submitted by CBI and department of Revenue (CBDT) and considering the seriousness of the allegation, the recommendation was for continuation of the suspension. Even office memorandum dated 7th January, 2004 also contemplates that in the case, the officer is accused of serious crime or a matter involving national security, despite the officer had been under suspension for one year, the review committee may recommend the continuation of the suspension of the official concerned. In the circumstances, the petitioner has not been able to make out a case for

revocation of order of suspension on the basis of OM relied on by the petitioner.

The Tribunal while dismissing the application of the petitioner had held that there was proper application of mind and the plea that similarly situated persons' suspension had been revoked had been declined as no particulars of such persons had been given.

The application for review has been dismissed on merit. The petitioner cannot be allowed to contend that the pleas raised in the review application has not been considered by the Tribunal. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

A review could not be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it. This 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. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, AIR 1979 SC 1047 the Supreme Court held that :-

“It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres 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 be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of 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 merit.”

Considering all the facts and circumstances, even this Court is of the view that the order of the respondents continuing the suspension of the petitioner is not contrary to the tenor of OM dated 7th January, 2004 nor there are any grounds for setting aside the order of suspension dated 28th July, 2009 and subsequent orders passed by the

Tribunal. The order dated 1st February, 2010 dismissing the application of the petitioner for review in the facts and circumstances does not have any illegality or irregularity which will require any interference by this Court.

In the circumstances, this Court does not find any illegality or irregularity in the order dated 1st February, 2010 dismissing the application for review of order dated 6th October, 2009 by which order the original application seeking quashing of suspension order was set aside.

The petitioner has also produced along with the writ petition, the copy of the order dated 25th January, 2010, by which the suspension of the petitioner has been extended for a further period of 90 days w.e.f., 27th October, 2009, especially as the case of petitioner for suspension, according to the respondents, is still under consideration of the Govt. (DOPT). Considering the seriousness of allegations the suspension has been extended for 90 days w.e.f. 25th January, 2010 on the similar grounds which have been upheld by the Tribunal and by this Court.

In the totality of facts and circumstances, the learned counsel for the petitioner has not been able to make out any ground for interference with the orders of the Tribunal or to set aside the suspension orders

passed by the respondent in the facts of the case. The writ petition is without any merit and, it is therefore, dismissed.

ANIL KUMAR, J.

April 12th, 2010
'rs'

MOOL CHAND GARG, J.