

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1 OF 2014

Ratan Chandra Debnath)
 residing at A-5/602, building)
 Devdar Lok Udyan, Kalyan(West)
 Dist. Thane – 421 301) .. Petitioner

Versus

1 The Admiral Superintendent)
 having his office at Naval)
 Dockyard Lion Gate,)
 Mumbai 400 023.)

 2 The Flag Officer Commanding)
 in Chief, having his office at)
 Western Naval Command,)
 Shahid Bhagatsingh Road,)
 Mumbai 400 001) .. Respondents

Mr. Vincent X. D'silva, Advocate for the petitioner
 Smt. S. V. Bharucha , Advocate for the respondents

CORAM:-ANOOP V. MOHTA &
 V. L. ACHLIYA, JJ.

DATED : -11/08/2015

ORAL JUDGMENT:-(Per V. L. Achliya, J.)

Rule. Returnable forthwith. By consent of the parties,
 taken up for final disposal at the stage of admission.

2 The brief facts leading to filing of this petition are summarized as under:

 The petitioner was served with the charge-sheet dated 13/5/2008. The articles of charge framed against the petitioner appears to be related to (i) unauthorized absence during the period 12/4/2006 to 25/9/2006 (67 days), (ii) obtaining passport without prior permission of the Competent Authority and (iii) submitting false medical certificate of unauthorized absence during the period 12/4/2006 to 25/9/2006 and 26/12/2006 to 09/03/2007. On service of the charge-sheet, the petitioner denied all the charges levelled against him. On conclusion of the enquiry, the Enquiry Officer held the petitioner guilty in respect of all the four charges. The petitioner filed objection to the reasons and findings recorded by the Enquiry Officer in the report of enquiry. However, the Disciplinary Authority overruled the objections and passed order to remove the petitioner from service. Being aggrieved by the order dated 18/2/2009 passed by the Disciplinary Authority, the petitioner preferred an appeal before the Appellate Authority. The Appellate Authority also rejected the appeal, vide order dated 21/5/2009.

Being aggrieved by the order passed by the Disciplinary Authority as well as the Appellate Authority, the petitioner approached the Central Administrative Tribunal and challenged those orders vide O.A. No. 207 of 2010. Vide judgment and order dated 5/12/2011 passed by the Central Administrative Tribunal, the application preferred by the applicant was rejected. Being aggrieved by the said order, the petitioner preferred Writ Petition before this Court, which was registered as No. 1220 of 2012. The petition was disposed of vide order dated 21/1/2013, with a direction to the petitioner to approach the Central Administrative Tribunal and to file review petition. Accordingly the petitioner filed review petition before the Central Administrative Tribunal. However, the Central Administrative Tribunal rejected the review petition vide order dated 10th May, 2013, mainly on the ground of delay as well as the limited scope of exercise of power of review by the Tribunal. Being aggrieved by the said order passed by the Tribunal, the petitioner has once again approached this Court challenging the order passed by the Central Administrative Tribunal as well as the Disciplinary Authority and Appellate Authority.

3 We have heard Mr. D'silva, learned counsel for the
petitioner and Smt. Bharucha, learned counsel appearing for the
respondents.

4 The learned counsel representing the petitioner has
invited our attention to Order dated 21/1/2013 passed by the
Division Bench of this Court (Coram:-A.M. Khanwilkar & K. K.
Tated, JJ.) passed in Writ Petitioner No. 1220 of 2012, the contents
of which read as under:

“ *Heard Counsel for the parties.*

2) *This Petition takes exception to the decision of
the Central Administrative Tribunal, dated 5th
December, 2011 in original application No. 207 of 2010.
The foremost point raised by the Writ Petitioner is that
the Tribunal proceeded on completely erroneous basis
and committed manifest error on the face of record. In
Paragraph 6 of the impugned decision, the Tribunal
records that the Applicant, in his appeal, filed before the
Appellate Authority, did not raise any ground of
discrimination or violation of principles of natural
justice. The Petitioner has relied on the appeal memo
and in particular averments in original application that
the inquiry conducted against the Petitioner was inter*

alia in breach of principles of natural justice.

3) *Prima facie, we find merits in this submission.*

However, instead of entertaining the Writ Petition and deciding that grievance of the Petitioner for the first time, in Writ Jurisdiction, we would deem it appropriate to give liberty to the Petitioner to approach the Tribunal for review of the impugned decision, on this count.

4) *The proposed Review Petition be filed within two weeks from today. All questions raised in the present Writ Petition are left open.*

5) *The Petition is disposed of accordingly.”*

5 By referring the above quoted order, the learned counsel has pointed out that the Division Bench of this Court on due consideration of the order passed by the Central Administrative Tribunal observed in the order that the Tribunal was to consider the matter as to whether the enquiry conducted by the Disciplinary Authority was conducted in accordance with the procedure prescribed under the law and more particularly principles of natural justice has been followed or not? It is contended that in view of the order passed by this Court the Tribunal ought to have considered the

submissions advanced on merits.

6 Smt. Bharucha, the learned counsel representing the respondents has supported the order passed by the Tribunal. She has argued that the Tribunal was fully justified in passing the order as in exercise of powers of review the Tribunal was not expected to have reopened the case and to decide the case afresh.

7 We have perused the order dated 10th of May, 2013 passed in Review Petition No. 15 of 2013 in Original Application No. 207 of 2010 passed by Central Administrative Tribunal, Bombay Bench, Mumbai. The order reads as under:

“ The review petition has been filed by the Applicant in the above Original Application. We have carefully perused the grounds raised by the Petitioner and the order passed by this Tribunal.

2 It may, at once, be noticed that the Original Application was disposed of way back by us on December 5, 2011. However, this Petition for Review has been filed only on February 1, 2013. This Petition is obviously barred by limitation. Petitioner has not even bothered to file a petition of condonation of delay in filing this review.

Nevertheless, we have considered the grounds urged by the Petitioner. The attempt of the Petitioner is apparently to get the case re-heard. We do not find error apparent on the face of the record warranting review. Therefore, the Petition for Review is dismissed.”

8 It appears that the Tribunal has rejected the review petition on the ground of delay as well as scope of hearing, and exercise of powers of review by the Tribunal. By order dated 21/1/2013 passed by the Division Bench of this Court (quoted above) in fact the direction to file review petition was passed, after due consideration of the submissions advanced in the matter and more particularly on consideration that certain grounds raised in the appeal were not considered by the Tribunal. Therefore, it was expected on the part of Tribunal to consider the observation made in the order. The direction given in the matter to petitioner to file the review petition may be the reason, the Tribunal restricted itself to consider the merits of the matter as same being outside and scope and exercise of powers of review by the Tribunal.

9 Considering the overall case of the petitioner, the

nature of charges, the order passed by the Disciplinary Authority as well as the Appellate Authority, we are of the view that the matter needs to be reconsidered by the Central Administrative Tribunal. In a matter, resulting into consequences of termination of service, it is expected that the matter be heard and decided on all aspects. It is necessary for Court / Tribunal to consider as to whether the procedure envisaged under the relevant rules and regulations has been followed or not, by the Disciplinary Authority. It is further necessary to see as to whether the principles of natural justice has been duly observed or not, while passing the order. Whether the reasons and findings are based upon due appreciation of evidence adduced in the matter and there was no perversity in decision taken by Disciplinary Authority as well as Appellate Authority. The aspect of punishment awarded also needs to be considered by the Tribunal and to ensure that the punishment imposed is commensurate with the misconduct committed by the person. All such aspects appears to be overlooked by the Tribunal.

10 We are, therefore, of the view that the order passed by the Central Administrative Tribunal needs to be set aside and matter

be remanded for fresh decision by the Central Administrative Tribunal. We, therefore, pass the following order:

ORDER

(I) The order dated 5th of December, 2011 passed in O.A. No. 207 of 2010 and Review Petition No. 15 of 2013 in O.A. No. 207 of 2010 decided on 10th of May, 2013 by Central Administrative Tribunal, Bombay Bench, Mumbai are hereby set aside.

(II) Tribunal is directed to restore O.A. No. 207 of 2010 on its file and decide the same afresh by providing full fledged hearing to the petitioner as well as the respondents and pass the order in the matter as expeditiously as possible, preferably within a period of six months from the date of passing of this order;

(III) The petitioner is directed to appear before the Central Administrative Tribunal on 25/8/2015 and to make appropriate application

to fix the date of hearing of the matter, with due notice to the respondents.

(IV) Liberty is granted to the petitioner to approach this Court in case any order adverse to the interest of the petitioner is passed in the matter.

(V) Rule made absolute in above terms with no order as to costs.

(V. L. ACHLIYA, J.)

(ANOOP V. MOHTA, J.)

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