

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M. VENUGOPAL

Writ Petition No.8067 of 2015

P.Kandhasamy

...Petitioner

Vs.

1. The Secretary,
Union of India,
Department of Posts,
New Delhi 110 001.
2. The Director of Postal Services,
Western Region,
Coimbatore 641 001,
Tamil Nadu.
3. The Chief Post Master General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
4. The Senior Superintendent of Post Offices,
Nilgiris Division, Udhagamandalam,
Nilgiris 643 001.
5. The Manager,
Mail Motor Service,
Coimbatore 641 001.
6. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, relating to the Order, dated 04.02.2015, passed in R.A.No.310/0003/2014, in O.A.No.637 of 2009, by the 6th respondent

Tribunal, quash the same as being illegal, arbitrary and unconstitutional and consequently, direct the 2nd respondent to treat the petitioner, as having superannuated from service in the normal course on 03.01.2015 and grant all attendant service benefits to the petitioner.

For Appellant : Mr.M.Gnanasekar

For Respondents 1 to 5 : Mr.T.L.Thirumalaisamy,
Central Govt. Standing Counsel

For Respondent 6 : Tribunal

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J.)

Being aggrieved by the impugned order, dated 04.02.2015, passed in R.A.No.310/0003/2014, in O.A.No.637 of 2009, the present writ petition has been filed, to quash the same and consequently, direct the Director of Postal Services, Western Region, Coimbatore, 2nd respondent herein, to treat the petitioner, as having retired on attaining the age of superannuation in the normal course, on 03.01.2015 and to grant all other attendant benefits.

2. Facts, as deduced from the materials on record, are that the petitioner was a driver in postal department. In exercise of the powers, under Section 56(j)(ii) of the Fundamental Rules, the Director of Postal Service, Western Region, Coimbatore, 2nd respondent herein, has issued an order, dated 17.04.2009, by which, the petitioner has been compulsorily retired. He filed O.A.No.318 of 2008, challenging the said order. Upon hearing the learned counsel for the parties and the materials on record, vide order, dated 9th October, 2009, O.A.No.637 of 2009, has been dismissed. Thereafter, the petitioner has filed M.A.No.698 of 2013, for condoning the delay of 1414 days, in filing the review application.

3. According to the petitioner, delay was condoned and the review application, was heard by the Hon'ble Bench, comprising of Hon'ble Member (Judicial) and the Hon'ble Member (Administrative). Out of two, the Hon'ble Member (Judicial), allowed Review Application No.3/2014 and consequently, set aside the penalty of compulsory retirement. The Hon'ble Member (Administrative) disagreed. Then the matter was referred to the Hon'ble Chairman (Judicial). The matter was heard and thereafter, the views dismissing the Review Application, was concurred. However, while dismissing the Review Application on 04.02.2015, the Hon'ble Member (Judicial) has recorded a finding that the delay of 1414 days in

filing the Review Application, was not satisfactorily explained and on that premise, dismissed the Review Application and condonation petition. According to learned counsel, there was no consideration to the merits of the Review Application.

4. Assailing the correctness of the order, dated 04.02.2015, Mr.Gnanasekaran, learned counsel for the petitioner submitted that the Hon'ble Member (Judicial), has committed a gross error in dismissing the Review Application, as well as Miscellaneous Application, filed for condonation, without considering the fact that delay had already been condoned. He also submitted that when out of the two Hon'ble Members of the Bench, who heard the Review Application, allowed the same and set aside the order made in O.A.No.637 of 2009, dated 09.10.2009, the Third Member (Judicial) ought to have accepted the said order, in all. According to him, Review Application No.3 of 2014, has been dismissed, solely on the ground of delay in filing, which according to him, had been condoned.

5. During the course of hearing, when we posed a question, as to when, M.P.No.658 of 2015, filed for condonation of delay of 1414 days, was allowed, Mr.M.Gnansekar, learned counsel for the petitioner was not in a position to give the date.

6. In order to ascertain the same and find out, as to whether, there is any factual mistake, in the impugned order, made in R.A.No.310/0003/2014, dated 04.02.2015, we directed the Registry to call for the entire records from the Central Administrative Tribunal, Madras Bench.

7. Material on record discloses that vide order, dated 06.12.2013, in M.A.No.698 of 2013, has been ordered, as hereunder:

"Though notice was issued on 06.11.2013, none present for the respondents. Therefore, accepting the reasons, stated in the affidavit, in support of M.A.No.698 of 2013, for condonation of delay, in filing Review Application, is allowed. Number the Review Application and post it before the appropriate Bench on 16.01.2014"

Thereafter, review application has been numbered as 3/2014 in O.A.No.637 of 2009 and listed on 21.01.2014, 12.02.2014, 05.03.2014 and 26.03.2014, respectively. On 03.04.2014, after hearing the learned counsel appearing for both the parties, orders were reserved.

8. Material on record further discloses that on 03.09.2014, the Hon'ble Member (Judicial), Sri.K.Elango, has allowed the Review Application. However, the Hon'ble Member (Administrative),

Mr.T.Prabhakaran, has rejected the Review Application. Therefore, Registry has been directed to place the matter before the Hon'ble Chairman, for reference. Subsequently, the Review Application was heard on 19.12.2014 and orders were reserved by the Hon'ble Member (Judicial). Thus, it could be seen from the above, there was divergent opinion in the review application. On 04.02.2015, under Rule 107 of the Central Administrative Tribunal Rules of Practice, 1993, orders have been pronounced as follows:

"Orders pronounced under Rule 107 of the Central Central Administrative Tribunal Rules of Practise, 1993. M.A., and R.A., are dismissed."

9. Though the learned counsel for the petitioner contended that the Tribunal has passed orders, on the review application, without considering the same, on merits, we are not inclined to accept the same, for the reason that the Tribunal, after considering the provision under Section 22(3)(f) of the Administrative Tribunals Act, 1985 and placing reliance on the decisions of the Apex Court in State of West Bengal v. Kamal Sen Gupta reported in 2008 (2) SCC L&S 735 and Kamlesh Verma v. Mayawati & Ors. reported in AIR 2013 SC 3301, has dismissed the review application, as hereunder:

"7. It is settled position that the power of the Administrative Tribunal to review its own orders under Section 22(3)(f) of the Administrative Tribunals Act, 1985, (hereinafter referred to as "the Act") is akin/analogous to the power of the Civil Court under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure. After analysing the ratio of a large number of precedents in the earlier cases, the the apex Court in State of West Bengal & Ors., v. Kamal Sen Gupta & Anr. - 2008 (2) SCC L&S 735, the Apex Court held:

"(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."

8. Of all the grounds to be considered in an application for review, the most significant is an error apparent on the face of the record. As stated above by the apex Court, 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 the exercise of power under Section 22(3)(f) of the Act. A fresh inquiry or re-hearing of the matter as if by way of an appeal also is not expected in the review under Section 22(3)(f). In a later case, Kamlesh Verma v. Mayawati & Ors. - AIR 2013 SC 3301, the Apex Court held:

"12. This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient...."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

9. A reading of the affidavit accompanying the present Review Application creates an impression that what the review applicant seeks is a thorough re-hearing

of the matter and as if he has approached an appellate forum, which is impermissible under Section 22(3)(f) of the Act. The afore-quoted observations of the apex Court in Kamalesh Verma are squarely applicable in this R.A., also. Hence, I am of the view that the Review Application is only to be dismissed."

10. But at Paragraph 10 of the order made in R.A.No.3 of 2014, the Hon'ble Tribunal has also recorded that M.A.No.698 of 2013 has been dismissed. As rightly pointed out by the learned counsel for the petitioner, when M.A.No.698 of 2013, filed for condoning the delay of 1414 days in filing the Review Application, had already been ordered, as early as on 06.12.2013, the Hon'ble Tribunal, in its order, dated 04.02.2015, ought not to have stated that M.A.No.698 of 2013 has also been dismissed.

11. Though the learned counsel for the petitioner has contended that the review application has been dismissed, solely on the basis of dismissal of M.A.No.698 of 2013, filed for condonation of the delay, in filing the Review Application, this Court, after perusal of the records, from the Central Administrative Tribunal, Madras Bench, is not inclined to accept the said submission. R.A.No.310/00003/2015 in O.A.No.637 of 2009, has been considered, with reference to the statutory provisions and that a decision has been rendered on 04.02.2015, based on the principles of law, laid down in the abovesaid decisions.

12. For the reasons, stated supra, we do not find any merit in the present writ petition. While dismissing the same, instead of directing the Central Administrative Tribunal, Madras Bench, to delete the sentence, "In the result, M.A.No.698 of 2013 and the Review Application are dismissed.", in exercise of the powers under Article 226 of the Constitution of India, we hereby delete the sentence, "In the result, M.A.No.698 of 2013, is dismissed." from Paragraph 10 in the order made in R.A.No.3/2014, dated 04.02.2015. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary,
Union of India,
Department of Posts,
New Delhi 110 001.
 2. The Director of Postal Services,
Western Region,
Coimbatore 641 001,
Tamil Nadu.
 3. The Chief Post Master General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
 4. The Senior Superintendent of Post Offices,
Nilgiris Division, Udhagamandalam,
Nilgiris 643 001.
 5. The Manager,
Mail Motor Service,
Coimbatore 641 001.
 6. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.
- 1 CC to Mr.M.Gnanasekar, Advocate SR.No.
- 1 CC to Mr.T.L.Thirumalaisamy, Advocate SR.No.

सत्यमेव जयते

Writ Petition No.8067 of 2015

EV (CO)

PSI (21.08.2015)

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