

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1775 OF 2005

Union of India and ors.	...Petitioners
Versus	
Bharat S. Patil	...Respondent

Mr. Suresh Kumar for the Petitioners.
Mr. A.L. Bhise i/b Mr. R.G. Walia for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 13th APRIL 2018.

ORAL JUDGEMNT.

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 23rd July 2004 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 257 of 2003 instituted by the respondent.

3] As against the impugned judgment and order dated 23rd July 2004, the petitioners, had infact, instituted a review petition vide Review Petition No. 90 of 2004 before the CAT. By detailed order dated 2nd December 2004, the review petition has also been dismissed by the CAT. In this

petition, we do not find any specific challenge to the order dated 2nd December 2004. In any case, we do not wish to hold this against the petitioners.

4] The respondent was appointed on compassionate ground as basic fitter on 4th February 21995 in the Central Railway. A charge memorandum was issued to him alleging unauthorised absence. Pursuant to the report submitted by the enquiry officer, disciplinary authority imposed penalty of removal from service upon the petitioner. The appellate authority has maintained the order of the disciplinary authority. The revisional authority by order dated 7th November 2002 , however, interfered with the order of the disciplinary authority and the appellate authority, insofar as the quantum of penalty is concerned and made the following operative order:

“However, on taking a sympathetic consideration since he being a compassionate appointee, I have decided to take a lenient view and reappoint him as a fresh entrant to the post of Khalasi Grade Rs.2550-3200 (RSRP) fixing his pay at Rs.2550/-.

The intervening period between removal and reappointment will be forfeited.”

5] After aforesaid order was made and communicated to the respondent, the revisional authority, sought to review its own order and made yet another order on 15th November 2002, the operative portion of which, reads as follows:

“However, on taking a sympathetic consideration since he being a compassionate appointee, I, have decided to take a lenient view and reduce the penalty to that of removal from service to reduction to lower grade of Rs.2550-3200 (RSRP) as Khalasi fixing his pay at Rs.2550/- for a period of 10 (ten) years with cumulative effect.”

6] The respondent instituted O.A. No. 257 of 2003, in which, he challenged all the orders, by which, penalties were imposed upon him. In the alternate, he submitted that the order dated 15th November 2002 made by the revisional authority seeking to review its earlier order dated 7th November 2002 was *ex facie* without jurisdiction and a nullity, since, no powers of review were vested in the revisional authority.

7] The CAT, by impugned judgment and order dated 23rd July 2004 rejected the respondent's contention that no penalty whatsoever was liable to be imposed upon him. However, the CAT, accepted the respondent's contention

that the order dated 15th November 2002 made by the revisional authority was a nullity, since, the revisional authority, lacked powers of review and in fact, had become *functus officio* after making and communicating the order dated 7th November 2002.

8] The petitioners instituted Review Petition No. 90 of 2004 to question the impugned judgment and order dated 23rd July 2004 in O.A. No. 257 of 2003 and in support relied upon a letter dated 12th May 2000 written by Dy. Chief Personnel Officer (HQ) in respect of procedure for rectification of the defective orders and imposition of defective penalties. The CAT, upon due consideration of such letter, nevertheless, opined that such letter does not vests in the revisional authority any powers of review and therefore, the order dated 15th November 2002 made by the revisional authority was a nullity. The review petition was accordingly, dismissed.

9] Mr. Suresh Kumar, learned counsel for the petitioners, once again, places reliance on letter dated 12th May 2000 and submits that the revisional authorities have review

jurisdiction and can always rectify the defective penalty orders. Mr. Suresh Kumar also submits that in fact the order dated 15th November 2002 is more beneficial to the respondent than the order dated 7th November 2002 made by the revisional authority. On these grounds, Mr. Suresh Kumar submits that the impugned judgment and order made by the CAT warrants interference.

10] Mr. A.L. Bhise, learned counsel for the respondent, submits that power of review is never inherent and the revisional authority in the present case, without being conferred powers of review, exercised review jurisdiction. He submits that the order passed by the revisional authority on 15th November 2002 was therefore, a nullity and was rightly set aside by the CAT. He submits that this petition may therefore, be dismissed with costs.

11] The rival contentions now fall for our determination.

12] The facts as referred to hereinabove, are really not in dispute. If according to Mr. Suresh Kumar, learned counsel for the petitioners, the order dated 15th November 2002 is

more beneficial to the respondent and consequently, if the order dated 7th November 2002 is less beneficial to the respondent, we fail to understand why the petitioners seek to set aside the order dated 7th November 2002 and restore the order dated 15th November 1992, which, according to their own contention is less beneficial to the interest of Union of India.

13] Be that as it may, Mr. Suresh Kumar, was unable to point out any provision on basis of which, it could be said that the revisional authority, is vested with powers of review. As has been held by the Hon'ble Supreme Court in ***Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and ors - 1987 SCC (L&S) 491***, it is well established that a *quasi judicial* authority cannot review its own order unless power of review is expressly conferred on it by statute or rules under which it derives its jurisdiction.

14] There is nothing in the letter dated 12th May 2000 on basis of which, it can be said that any power of substantive review as such can be said to be vested in the revisional

authority. The order dated 15th November 2002 is nothing but exercise of substantive review, when no such powers of such substantive review are vested in the revisional authority.

15] For the aforesaid reasons, we find no error in the impugned judgment and order so as to warrant interference under Articles 226 and 227 of the Constitution of India.

16] This petition is therefore, dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)