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

+ W.P.(C) 11248/2017 & C.M. No. 45979/2017

RISHI PAL TOMAR

..... Petitioner

Through: Ms. Jyoti Dutt Sharma with Mr.
Rahul Sharma, Mr. C.K. Bhatt and
Mr. Bilal Ali, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Akshay Makhija, CGSC with Ms.
Seerat Deep Singh and Mr. Ankit
Tyagi, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

08.01.2019

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Counsel for the petitioner has tendered in Court the order dated 01.10.2018 passed by the Tribunal in R.A. No. 32/2018, preferred by the petitioner in consequence of the order dated 19.12.2017. The Tribunal has dismissed the said Review Application on the premise that no liberty had been granted to the petitioner to prefer the Review Application.

In the writ petition, Ground B and C taken by the petitioner read as follows:

“B. BECAUSE arguments addressed were confined to the limited aspect of remanding the matter back to the department for revisiting the Revision Order in the light of the law of acquittal as has been laid down by the Hon’ble Supreme Court

of India in matter G.M. Tank v. State of Gujarat, 2006 SCC (L&S) 1121 and others.

C. BECAUSE the Petitioners had reserved their right to argue the matter on merits on a later date to which the learned Tribunal agreed before the start of arguments on technical aspect.”

Thus, the submission of the petitioner before this Court was that though the argument before the Tribunal was confined to the limited aspect of remanding back the matter to the Department for re-visiting the Revision Order in the light of the judgment of the Supreme Court in ***G.M. Tank v. State of Gujarat, 2006 SCC (L&S) 1121 and others***, the Tribunal had proceeded to dispose of the Original Application on merits, even though the merits were not argued by the petitioner before the Tribunal.

This aspect is something that only the Tribunal can answer. It is in this light that the petitioner made a statement that he would prefer a Review Petition before the Tribunal and, consequently, the matter was adjourned to 16.05.2018.

Strictly speaking, it is correct that this Court had not vested the right to the petitioner to prefer a Review Petition. This Court had merely recorded the submission of the learned senior counsel appearing for the petitioner that the writ petition may be adjourned to enable the petitioner to avail a Review Petition before the Tribunal to seek review of the order dated 20.03.2017. However, when considered in the aforesaid light, we are of the view that the Tribunal should have proceeded to consider the Review Petition on its merits rather than rejecting the same only on the ground that this Court had not granted liberty to the petitioner to prefer the Review Application. To prefer a Review Petition, no liberty is required to be

granted by this Court as that remedy is available to the petitioner under law.

Consequently, we set aside the order dated 01.10.2018 passed by the Tribunal in RA No. 32/2018 and restore R.A. No. 32/2018 before the Tribunal. The said Review Application shall be heard and disposed of on merits by the Tribunal. In case, the petitioner is still aggrieved, it shall be open to him to avail of such remedies as are available to him in law.

In the light of the facts and circumstances of the case, the issue of limitation shall not arise at the hearing of the Review Application. The Review shall be heard on the merits of the Review Application.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 08, 2019

N.Khanna