

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO. 13 OF 2022
IN
WRIT PETITION NO. 1328 OF 2003**

C. J. Solanki

...Petitioner

V/s.

Union of India & Ors.

...Respondents

Mr. Rajeev N. Kumar with Ms. Shrutika Jadhav for
the petitioner.

Mr. M. S. Bhardwaj for the respondents.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: AUGUST 26, 2022

P.C.:

1. This is an application for review of our judgment and order dated April 21, 2022. Thereby, we had allowed Writ Petition No.1328 of 2003 instituted by the Union of India and others (hereafter "writ petitioners", for short). While setting aside the order under challenge dated 18th December, 2002 of the Central Administrative Tribunal (hereafter "the Tribunal", for short), we dismissed the original application (Original Application No. 502 of 1998) of the respondent who is the review petitioner before us.

2. We have perused the pleadings in the review petition, more particularly paragraphs 13 to 16, which read as under: -

"13. First and foremost error on the part in the

Judgment is to ignore the fact that the Writ petitioner (Union of India) had purposefully not annexed all the documents relied upon by the applicant in the original application and thereby suppressed the material documents and committed a kind of fraud on the court while filing the Writ Petition/deprive the Hon'ble court reach to the correct finding of facts. Hon'ble Court could have asked the either of the parties to furnish those documents and the hurry shown by the Hon'ble Court has caused serious and manifest error.

14. **Second and foremost error on the part in the judgment** is that no opportunity had been provided the petitioner to supply those suppressed material documents to this Hon'ble court/so as to reach the correct finding of facts. But, Hon'ble court has ignored this most basic rule of law and decided against the petitioner without affording him an opportunity of being heard and thus caused serious prejudice and cause an obvious and manifest injustice to the petitioner by this judgment. Moreover, this is a fact that the petitioner has also submitted during the course of the argument a written submission along with few Medical certificates which were part of the Original Application and not only this Hon'ble High Court has ignored to make any reference to such evidence on record but also decided the finding of facts against the Petitioner without according an opportunity of being heard and thus caused **Serious errors and cause manifest prejudice to petitioner.**

15. **Thirdly This Hon'ble Court is not the first Court to decide disputed questions of facts** and could not have decided those issues of facts which Hon'ble Tribunal for valid reasons have not decided as they have remanded the matter for fresh Inquiry before Disciplinary proceedings. It is trite law that '**An Act of Court ought not to prejudice the case of any party**'. This Act of Hon'ble Court has prejudiced the case of the Review Petitioner (Original Applicant) as there is no remedy lying with him now but to file this review Petition for Hon'ble Court to consider to review its judgment on the issue of facts decided against him erroneously by this Hon'ble High Court or decide to remand the matter to Hon'ble CAT to decide afresh.

16. The Respondent Employee had Compelling Circumstances to be absent from duty. **(Copy of OA Exhibit K at page 44 to 58 of the Writ Petition)** Specific references in **Para 5, 6, 7, 8, 9 and para 10 of OA at page 51-54 of Writ Petition and kind attention was drawn in writing and vide oral submissions.** That Review Petitioner was suffering from Serious psychological depression

(psychotic depression) and undergoing medical treatment. That period from 1991 onwards was too traumatic for him, he lost his mother, his brother got missing, he lost his wife and he was declared unfit by Psychiatrics, so much so he was not able to comprehend the reality perceptions and was totally mentally incapacitated and not aware of what is happening around during those years. In 1996 he was finally cured after several medical treatments. **The Copy of Such medical certificate dated 12/10/1996 were also enclosed for kind Perusal of Hon'ble High Court."**

(bold font in original)

3. In paragraph 13, the review petitioner has claimed that the writ petitioners had purposefully not annexed relevant documents which were relied upon by him in his original application and thereby, suppressed material documents. This, according to the review petitioner, amounts to commission of fraud on Court.

4. We distinctly remember having noticed on perusal of the writ petition, and it has been noted in the judgment under review, that the same did not contain documents which were annexed to the original application filed by the respondent in his original application before the Tribunal. Accordingly, we had called upon Mr. Bharadwaj, learned advocate appearing for the writ petitioners as well as Mr. Kumar, learned advocate (appearing for the respondent, who is now the review petitioner) to produce the same. Both advocates regretted their inability to produce the same. While reserving judgment on 8th March, 2022, we had called upon the Registrar of the Tribunal to produce the records of the original application. It was informed to us by the Registrar subsequently that in terms of the Rules of Procedure of the Tribunal, the records of the original application were not preserved in its entirety after

lapse of certain years from its disposal. Only the order sheets as well as the order/judgment copy of disposal of the original application have been preserved. In such view of the matter, we were left with no option but to proceed on the basis of the documents annexed to the writ petition only since there was no counter affidavit on record, filed by the respondent.

5. As has been noted in paragraph 18 of the judgment under review, we were tasked to decide the question whether the disciplinary authority while proceeding to take disciplinary action against the respondent (the review petitioner) and imposing the penalty of compulsory retirement had complied with the Civil Services Rules (Classification, Control & Appeal) Rules, 1965, and in particular rules 14 and 30 thereof.

6. Referring to the materials placed on record as well as the decisions on the relevant point rendered by the Supreme Court in various cases, we recorded our conclusion in the judgment under review that the rules had been duly followed by the disciplinary authority and also that the respondent was unable to persuade us hold that the rules have been followed in the breach. The respondent was on unauthorized leave and hence, not present in the office for a personal tender of the charge-sheet in terms of rule 30. Accordingly, the disciplinary authority had availed the alternate mode of service and transmitted the charge-sheet by registered post at the last available address of the respondent but the registered envelope had been returned with the endorsement 'not claimed'. Not only that, other communications were dispatched by the disciplinary authority by adopting the same mode which could not actually be served on the respondent

because he was either not available to receive the same or did not claim the same. In such circumstances, we held in the judgment under review that the charge-sheet and the other communications relating to holding of inquiry into the conduct of the respondent must be deemed to have been served on him and it was also held that the Tribunal had erred in arriving at the finding that the charge-sheet had not been served and, hence, the rules had not been followed. Moreover, neither did the respondent submit his written statement of defence nor attend the inquiry. It is in such further circumstances that we had proceeded to hold that the decision relied on by Mr. Kumar, on behalf of the respondent, in **Krushnakant B. Parmar v. Union of India**, reported in (2012) 3 SCC 178, would not be applicable. The ratio of the said decision would have been attracted if only the respondent had put up a plausible defence that genuine reasons disabled him from attending office and resuming duty after expiry of his leave, and not that it was a case of overstaying leave deliberately and without sufficient cause. The Tribunal, it was held, thus was in error in setting aside the impugned order of compulsory retirement of the respondent and directing re-inquiry.

7. We would have taken serious exception to the ground for review urged in paragraph 14 of the review petition, had the review petitioner not claimed to be a psychiatric patient. It is absolutely incorrect to allege that no opportunity was given to him by the Court. The writ petition was admitted way back on 9th October, 2003. During the nearly two decades next the writ petition remained pending on the file of this Court, no

counter affidavit to it was filed by the review petitioner. If indeed the writ petitioners had suppressed material facts, there is no reason as to why the relevant documents (alleged to have been kept out of our consideration deliberately) were not brought on record by filing a counter affidavit. There is also no reason as to why the review petitioner did not furnish the relevant documents to Mr. Kumar for being placed before us at the time of final hearing. We wish to say no more except reminding ourselves of the maxim *res ipsa loquitur*.

8. The contention of the review petitioner that documents annexed to the written notes of arguments were 'materials on record' and, therefore, ought to have been considered by us is thoroughly misconceived. The Supreme Court in **Bharat Singh v. State of Haryana**, reported in (1988) 4 SCC 534, has held that if a document, which is sought to be relied on by a party to any writ proceedings, has to be brought on record either by annexing it to the writ petition or the counter affidavit, as the case may be. Unfortunately, documents seeking to substantiate the illness from which the review petitioner was suffering from were annexed to the written notes of arguments, without there being any pleading (counter affidavit) in that behalf. We could not have, while writing the judgment under review, considered documentary evidence not brought on record in a manner known to law.

9. In any event, what appears from a bare reading of paragraphs 13 to 16 of the review petition extracted supra is a challenge to the judgment and order under review on its merits. Having regard to the decision of the Supreme Court in **State of West Bengal v. Kamal Sengupta**, reported in

(2008) 8 SCC 612, a review is not a re-hearing of the matter on merits in disguise.

10. We, therefore, find no merit in the review petition which, consequently, stands dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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