



Rev. Appl. No.95 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR

and

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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K.K.Prasad

... Petitioner

-VS-

1. The Union of India,
Rep. by the Secretary,
Ministry of Home Affairs,
North Block, New Delhi 110 001.
2. The Inspector General,
CISF South Sector Head Quarters,
Ch.P.T.Campus, Chennai 600 009.
3. The Deputy Inspector General,
CISF, South Zone Head Quarters,
'D' Block, 1st Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.
4. The Group Commandant,
CISF Group Head Quarters,
NISA Campus, Hakimpet,
Hyderabad.

... Respondents

PRAYER : Review Petition filed under Order 47 Rule 1 read with Section 114 CPC seeking to review the order dated 15.02.2021 made in W.A.No.1521 of 2019 on the file of this Court.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.Venkataswamy Babu



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Spl. Panel Counsel

* * * * *

ORDER

(Order of the Court was made by **S.S.SUNDAR, J**)

This review application is directed against the judgment of this Court dated 15.02.2021 passed in W.A.No.1521 of 2019.

2. Brief facts that are necessary for the disposal of this review application are as follows:

(a) The review applicant suffered an order of punishment of dismissal on the ground of desertion by the fourth respondent in 2012. The applicant filed an appeal before the third respondent and the third respondent passed an order on 10.02.2017 rejecting the appeal. The revision petition filed by the applicant was also dismissed by order dated 04.01.2018. Thereafter, the applicant challenged the orders in writ petition W.P.No.30036 of 2018. The writ petition was dismissed by order dated 16.11.2018. As against the order of the learned Single Judge, the applicant has filed the writ appeal in W.A.No.1521 of 2019.



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(b) When the writ appeal was pending, a Division Bench of this Court, taking note of the fact that the petitioner/review applicant had lost his wife and mother at the relevant point of time and that he was under mental stress, passed an order on 17.06.2019 on the following lines:

"5. After hearing the learned counsel for the appellant and the learned counsel for the respondent, we are of the view that the issue requires fresh consideration, by the Appellate Authority. The consideration should be as to whether the punishment should be one of compulsory retirement, instead of dismissal. The Appellate Authority must consider all the factual aspects including the death of the appellant's wife. The appellant should be given an opportunity of personal hearing before deciding the matter.

6. We permit the appellant to submit a comprehensive representation to the Revisional Authority. The Revisional Authority is stated to be the Inspector General of Police, Central Industrial Security Force, Chennai. We direct the Revisional Authority to entertain the representation of the petitioner and consider the matter leniently. The Revisional Authority is further directed to pass a speaking order within a period of two months from the date of receipt of the representation."



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(c) Thereafter, the Inspector General, CISF, pursuant to the direction of this Court dated 17.06.2019, passed the following order dated 23.10.2019:

" 9. However, the undersigned is inclined to take a lenient view by taking into account his long service, unexpected demise of his wife while he was on leave, the future of his children as well as court direction issued on 17.06.2019 in WA.No.1521/2019 to entertain the representation of the petitioner. Thus, the undersigned is modifying the quantum of punishment from "Removal from Service" awarded by Gp.Comdt. Gp HQrs., Hyderabad vide final order No.(1084) dated 11.07.2012 and accepted by the DIG CISF SZ HQrs, Chennai vide appellate order No.(1201) dated 10.02.2017 to that of "Removal from Service with the benefit of Compassionate Allowance @Rs.3500/- (Rupees Three Thousand Five Hundred only) p.m. from the date of being struck off from the strength of CISF i.e. wef: 11.07.2012 under Rule 41 of CCS (Pension) Rules, 1972 on extreme compassionate grounds."

(d) When the writ appeal was heard finally by a Division Bench



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of this Court, the appellant/review applicant raised the issue that the earlier order of this Court dated 17.06.2019 was not considered by the second respondent and that the second respondent has passed the order which is quite contrary to the direction of this Court. This submission was considered by the Division Bench and the Division Bench did not accept the submission of the learned counsel for the appellant/review applicant. Paragraphs 10 and 11 of the judgment of this Court dated 15.02.2021 in the writ appeal read as follows:

" 10. At this stage, the learned counsel for the appellant would submit that by way of interim order, the Division Bench of this Court directed the respondents to inform the possibility of modifying the order of removal into one of compulsory retirement, however, the respondents have chosen only to award compassionate allowance to the appellant instead of modifying the order of punishment. Thus, he insisted this Court to allow the writ appeal by directing the respondents to modify the order of removal into one of compulsory retirement.

11. We are not inclined to accept the submission of the learned counsel for the appellant. This Court, by order dated 17.06.2019, has only directed the respondents to consider leniently the representation that would be submitted by the



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appellant. The Division Bench has never directed the respondents to reduce the punishment imposed on the appellant. Even otherwise, the appellant himself, in the statutory appeal filed before the third respondent and in the revision filed before the second respondent, has categorically sought for modifying the punishment of removal into one of compulsory retirement or to direct the respondents to award compassionate allowance as contemplated under Rule 41 of CCS (Pension) Rules. In fact, pursuant to the direction of the Division Bench of this court on 17.06.2019, the respondents have taken a lenient view to grant compassionate allowance to th appellant, as sought for by the appellant himself. In such view of the matter, we are not inclined to interfere with the order passed by the learned single Judge. We are only inclined to dispose of this appeal by recording the affidavit dated 01.02.2021 of the Group Commandant, Office of the Group Commandant, CISF Group, Head Quarters at Hyderabad."

3. The learned counsel appearing for the review applicant states that the order passed by the Division Bench is quite contrary to the earlier direction in the order dated 17.06.2019. In support of the said contention,



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the learned counsel would rely upon the judgment of a Division Bench of this Court in ***J.Sathish vs. Member Secretary, Tamil Nadu Pollution Control Board***, reported in ***2012(2) CTC 91***. Para 16 of the said judgment is relied upon and the same reads as follows:

"16. As per the principles enunciated by the Hon'ble Supreme Court, it is clear that High Court cannot sit in Appeal in an earlier Order passed by it in the same matter, which has already attained finality and set aside that Order. Further, the Doctrine of Precedent is well explained by observing that a Coordinate Bench of the High Court is bound by another Coordinate Bench where the Order has attained finality, and Judicial discipline has to be maintained in this regard."

4. From the submission and the judgment relied upon by the learned counsel for the review applicant, this Court found that the challenge to the order dated 15.02.2021 is on the ground that it is erroneous for the reason that the order is quite contrary to the Doctrine of Precedent. The submission is not on the ground that the order which is sought to be reviewed suffers from an error apparent on the face of the



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record but on the ground that it is erroneous. There is a distinct difference between 'error apparent on the face of record' and 'erroneous'.

The Hon'ble Supreme Court and this Court have time and again laid down the difference between the scope of review and the scope of appeal. When the applicant challenges the order on merits and on the ground that it is contrary to the earlier order passed in the same appeal, the applicant's contention cannot be countenanced in a review application. Review is not an appeal in disguise as has been laid down by the Hon'ble Supreme Court on several occasions.

5. Having filed the review application challenging the order on the ground that it is in contravention to the previous order, the review application is not maintainable since the Division Bench has categorically explained the scope of the earlier order and hence, this Court finds no merit in the review application.

The review application is, accordingly, dismissed. No costs.

(S.S.S.R., J.)

(S.S.K., J.)

07.08.2024

Index : Yes/No



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NC : Yes/No

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