

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

R.A. No. 01 of 2017

in

O.A. No. 58 of 2011

THURSDAY, THE 5TH DAY OF APRIL, 2018.

CORAM :HON'BLE DR.(MRS.) JUSTICE INDIRA SHAH, MEMBER (J)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

Md. Mirajul Haque Molla, son of Sk.
Khoda Box, Village and Post Office
Deshpur, Purba Paharpur, Police
Station Beldanga, District:Murshidabad,
West Bengal.

..... Applicant

By Advs. Mr. Shamim Ahmed.
Ms. Salma Sultana Shah

Versus

1. Union of India, Service through
Secretary, Ministry of defence, South Block,
Defence Head Quarters,
New-Delhi-110011.
2. Major General, Madhya Bharat
Area, Jabalpur, Bihar.
3. Major AAG (Legal) for GOC Head
Quarter, Madhya Bharat Area,
Jabalpur, Bihar.
4. General Officer Commanding,
Bihar Area, Patna, Bihar;
5. Colonel Commanding Officer-I, 3rd
Battalion, (AT) Arm Services Corps.
Centre (North), P.O. Berhampore,
District Gaya, Bihar.

..... Respondents.

By Adv. Mr. Satyendra Agarwal.

ORDER

Justice Indira Shah, Member (J)

1. Heard Mr. Shamim Ahmed, learned counsel for the applicant and Mr. Satyendra Agarwal, learned counsel for the respondents.
2. This is an application for review of the judgment and order dated 12.04.2016 passed by this Tribunal in OA No. 58 of 2011.
3. The brief facts leading to filing of this application are that the applicant was enrolled in Army, BRO, Kanchrapara, West Bengal on 30.09.2004. There was an allegation that he managed his enrolment suppressing the fact of his involvement in a criminal case. He was found guilty in the Summary Court Martial held at ASC Center (North) Paharpur, Gaya and dismissed from service.
4. Aggrieved by the award of the Summary Court martial the applicant preferred an appeal by filing OA No. 58 of 2011. His specific plea was that he was not aware of the pendency of the criminal case against him when he filled the verification roll. He was not guilty of willful false answer to column 15(i) of IAFK-1152 (Revised) and he was minor when the criminal trial was conducted against him. This Tribunal after perusal of all relevant records including the records of Court Martial and hearing both sides at length held that the appellant (applicant herein) is not entitled for his reinstatement in service. At the same time, looking to over all circumstances of the case and the fact that the appellant (applicant herein) was minor at the time of commission of offence converted the award of dismissal into discharge simplicitor.
5. Learned counsel for the applicant has argued that the applicant was dismissed from his service only on the basis of information supplied by Intelligence Branch, West Bengal, without even verifying the varacity of the same. It is submitted that the burden of proof lies upon the respondents to prove the charges against the applicant. In the OA the applicant specifically stated that he was never arrested or detained by the police in respect of any criminal case. The respondents failed to produce sufficient materials in support of the impugned order.

6. Learned counsel for the applicant, in support of his contentions, has relied upon the decisions in the case of Board of Control for Cricket in India and another vs. Netaji Cricket Club and others reported in (2005) 4 SCC 741 ; Avtar Singh vs. Union of India and others reported in (2018) 1 SCC 268. In the case of Avtar Singh (supra) the appellant was terminated from service on account of suppression of his involvement in a criminal case. The Apex Court considered in detail as to circumstances under which the stringent action could be taken and to what extent the employer can exercise its discretion. In the cited case of Board of Control for Cricket in India and another (supra) the provisions of section 114 and Order 47 Rule 1 of the Civil Procedure Code have been discussed. It has been observed that the application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

7. On perusal of the relevant OA herein and the judgment passed by this Tribunal it appears that the applicant faced the trial before the Criminal Court and he was acquitted along with his family members. It also appears that the applicant sent an application to the respondents disclosing the order of acquittal and asking them to reinstate him in the service.

8. Learned counsel for the respondents have referred to the order dated 12.08.2016 passed in RA No. 75 of 2016 in TA No. 07 of 2011 by the Armed Forces Tribunal Chandigarh Regional Bench as well as MA No. 9 of 2015 in RA No. 2 of 2015 of the Armed Forces Tribunal, Regional Bench, Guwahati. In RA No. 75 of 2016 (supra) it has been observed in paragraphs 12 and 13 as follows :

“12. In fact the contentions raised for review must be conferred by law either specifically or by necessary implication. It is the creation of the statute. Certainly a review is not an appeal in disguise. Of course the power of review is the exercise for the correction of mistake and not to substitute a view and this power is only to be exercised within limits of the statute dealing with the exercise of power.

13. It is also well settled that the mere possibility of two views one ventilated by the review-petitioner, on the subject, and another propounded by the Court/Tribunal is absolutely no ground for review. It is equally well established principle that the error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be searched. It must be an error in advertence”.

9. The plea raised by the applicant in this review application was earlier raised in the Original Application which was considered at length.

10. Therefore, we are of the considered opinion that the Review Court cannot sit as an Appellate Court and reassess the evidence.

11. Accordingly, this review application is devoid of merit and it is dismissed.

12. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties upon compliance of requisite formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER(ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)