

(2014) 11 SHI CK 0109
In the High Court Of Himachal Pradesh
Case No : Civil Review No. 2 of 2012

K.P. Singh

APPELLANT

Vs

High Court of H.P.

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 226

Citation : (2014) 11 SHI CK 0109

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Jiya Lal Bhardwaj, Advocate for the Appellant; Jyotsna Rewal Dua, Advocate, Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Addl. A.Gs., J.K. Verma and Kush Sharma, Dy. A.Gs, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—This review petition under Section 114 read with Order 47 of the Code of Civil Procedure has been preferred by the petitioner for reviewing the judgment dated 21.4.2011 passed by this Court in LPA No. 163 of 2009 whereby the judgment passed by the learned Single Judge has been affirmed and consequently the writ petition preferred by the petitioner seeking quashing of the order dated 5.6.2004 whereby the petitioner has been ordered to be removed from service has been dismissed.

2. At the outset, it may be observed that against the judgment dated 21.4.2011, the petitioner had preferred SLP before the Hon'ble Supreme Court which was withdrawn by him on 13.9.2011 and the following order was passed:

"Learned counsel appearing for the petitioner seeks permission to withdraw this petition to enable the petitioner to file a review petition. Permission is granted. The special leave petition is disposed of as withdrawn."

3. According to the petitioner, there is error apparent on the face of the record inasmuch as this Court while delivering its judgment on 21.4.2011 has not taken

into consideration:

"(i) That the additional evidence taken on record by the Inquiry Officer was in violation of Rule 14(15) of CCS (CCA) Rules (for short "Rules") and non-compliance thereof had caused material prejudice to the petitioner;

(ii) The Inquiry Officer was biased and this Court had held that since the petitioner had not approached the reviewing authority for change of the Inquiry Officer, his plea was turned down, while as a matter of fact, the petitioner had approached the reviewing authority vide Annexure P-7 for change of Inquiry Officer; and

(iii) There was violation of Rule 17 of the Rules which mandated the Disciplinary Authority to supply to the petitioner, the copy of the findings/statement of findings on each article of charge after considering the representation submitted by him which was not supplied to him."

4. Before we proceed any further, we may take note of a decision rendered by this Bench in Civil Review Petition No. 4084 of 2013 titled M/s. Harvel Agua India Private Ltd. v. State of H.P. and others, decided on 9.7.2014 wherein after reviewing the entire case law on the subject, this Court held as follows:

"10. Thus what appears to be more than settled law is that an 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 fished out and searched. It must essentially be an error of inadvertence and definitely something more than a mere error and must be one which must be manifest on the face of the record. If the error is so apparent that without further investigation or inquiry only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. However, under the guise of review, the parties are not entitled to re-hearing of the same issue but the issue can be decided just by a perusal of the record and if it is manifest can be set right by reviewing the order. It must be remembered that in exercise of the powers of review this court cannot sit in appeal over its own order. Re-hearing of the matter is impermissible in law, since the power of review is an exception to the general rule that once the judgment is signed or pronounced, it should not be altered. It has to be remembered that power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated like an appeal in disguise.

11. The error contemplated under the rule is that the same should not require any long-drawn process of reasoning. The wrong decision can be subject to appeal to a higher form but a review is not permissible on the ground that court proceeded on wrong proposition of law. It is not permissible for erroneous decision to be "re-heard and corrected." There is clear distinction between an erroneous decision and an error apparent on the face of the record. While the former can be corrected only by a higher form, the latter can be corrected by exercise of review jurisdiction. A review of judgment is not maintainable if the only ground for review is that point is not dealt in correct perspective so long the

point has been dealt with and answered. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition of old and overruled arguments cannot create a ground for review. The present stage is not a virgin ground but review of an earlier order, which has the normal feature of finality.

12. Having observed so, it would be seen that the petitioner is seeking the present review on the ground that points raised in the petition have not been dealt in correct perspective, though the same have admittedly been dealt with. We are afraid that such questions cannot be gone into and determined by this court in exercise of its review jurisdiction, particularly when a detailed judgment running into 35 pages has been delivered by this court, wherein not only the factual but even the legal aspects of the case have been dealt with in detail."

5. Undisputedly, all the points as have been raised herein have been dealt with in detail not only by the learned Single Judge but even by this Court while deciding LPA No. 163 of 2009. The learned Single Judge while deciding the case had culled out the following points for determination:

"27. On the basis of submissions made by the learned counsel for the petitioner, the following points emerge for determination:-

(1) The Inquiring Authority was authorized by disciplinary authority to conduct the inquiry, the impugned order dated 5.6.2004 was passed by the State Government. Therefore, in the present case the disciplinary authority was the Inquiring Authority.

(2) The Inquiring Authority has taken on record various documents of presenting side in violation of Rule 14(15) of the Rules.

(3) The Rule 15(2) and Rule 15(2A) of the rules have been violated.

(4) The impugned order/notification is not a speaking order. The Rule 17 has been violated. The proceedings of the Full Court meeting dated 7.4.2004 were not supplied to the petitioner, which has caused prejudice to the petitioner.

(5) The statements of most of the witnesses of the presenting side were not supplied at the proper time to the petitioner. The Inquiring Authority did not provide appropriate opportunity to the petitioner to lead defence evidence. The Inquiring Authority was biased. The Inquiring Authority has only considered the case of the presenting side and the evidence led by the petitioner has not been considered. There is no legal evidence in the inquiry in support of various charges. The written arguments submitted to the Inquiring Authority were not considered.

(6) The Disciplinary Authority did not give personal hearing at the stage of considering reply to chargesheet and also at the final stage when the comments of the petitioner to the inquiry report were sought."

It was after giving detailed findings on each of the points that the writ petition was dismissed.

6. Likewise, when the matter came up before this Court, the petitioner raised the following contentions:

"3. Before us, the main contentions are:

i) The inquiry is conducted in violation of the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, in particular Rule 14(15);

ii) The report is based on no evidence;

iii) The inquiry officer was biased in the sense also that his version of the absence was not taken into consideration;

iv) The disciplinary authority, namely the High Court has not considered the comments offered by the delinquent officer to the inquiry report and recorded its findings and that such findings have not been communicated to the petitioner whereby the whole proceedings are vitiated; and

v) There is violation of the principles of natural justice in not granting an opportunity for personal hearing."

This Court dealt with all the aforesaid five contentions in detail and dismissed the appeal preferred by the petitioner-appellant.

7. While dealing with the first contention as now again raised by the petitioner in this petition, this Court held:

"4. The main allegation is that after closing the evidence, new evidence has been permitted to be adduced. Whether it is permissible is the question. Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, provides for procedure for imposing major penalties. Sub Rule 15 of Rule 14 reads as follows:

"(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note.--New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

5. A perusal of the Rule would clearly show that there is no absolute bar under the Rules in production of new evidence at the stage of closing the case on behalf of the disciplinary authority. It is permissible at the discretion of the Inquiry Officer. It is the duty of the Inquiring Authority to make every possible and permissible attempt to find out the truth and that is why it is sometimes termed as fact finding enquiry. In the event of the Inquiry Officer allowing the production of such new evidence, the delinquent government servant shall be entitled to have, if he deems, a copy of the list of further evidence proposed to be produced and an adjournment by clear three days before the production of such new evidence. The delinquent shall also be entitled to inspect such documents and he may also seek for an opportunity to produce new evidence on his part. The note under Sub Rule 15 bars the production of new evidence to fill up any gap in the evidence; however, such evidence is permitted when there is an inherent lacuna or defect in the evidence which has been produced originally. The documents Exhibits P-2A, P-4A to P-7A, P-11A to P-13A, P-42 to P-48, P-49 and P-50, are the documents which according to the petitioner have been permitted to be produced after closure of evidence by both the sides. Exhibit P-2A is the certified copy of the passenger manifest of Flight No. TG 316 on 10.12.2002, Delhi to Bangkok and that of Flight No. TG 315 from Bangkok to Delhi on 22.12.2002. Exhibit P-2 originally produced was the computer print out. Likewise, Exhibit P-4A to P-7A are the details of embarkation of the delinquent officer and Smt. Deepa Singh. In the place of those certified copies, computer print outs had already been produced. Exhibit P-11A to P-13A are again the certified copies of the embarkation and dis-embarkation cards, the computer print outs of which had already been produced. Exhibit P-42 to P-48 are the applications of the delinquent officer for visa on arrival, his clear photograph, embarkation form, embarkation form of Ms. Deepa Singh, application for duplicate Passport of delinquent officer, visa application form, the flight manifest of the return flight from Bangkok to Delhi and letter of Royal Thai Embassy, New Delhi, regarding the travel of delinquent officer. Going through the proceedings of inquiry, we find that these documents have been produced with clear three days notice to the delinquent officer and on 27.12.2003, the appellant has acknowledged the receipt of the documents. On 3.1.2004, the statement of the delinquent officer as counter signed by him reads as follows:

"I do not want to lead any evidence in rebuttal to rebut the documents, Exhibits P-2A, P-4A, P-5A, P-6A, P-7A, P-11A, P-12A, P-12A, P-13A, P-41, P-42, P-43, P-44, P-45, P-46, P-47 and P-48, which have been introduced by the presenting side after closure of their evidence. I shall only argue orally with regard to admissibility of these documents and production at a late stage."

(emphasis supplied)

6. As we have already discussed above, Rule 14(15) does not in any way bar the recalling of any witness or production of new evidence. If such a process is adopted, certain safeguards are prescribed under the Rule so as not to cause any prejudice to the delinquent officer. He is to be given the list of documents, he is to be granted three clear days time, he is to be granted an opportunity to inspect the documents and he is also to be given an opportunity to lead fresh evidence if it is required in the interest of justice. The only restriction is that the evidence thus led shall not be to fill the gaps in the evidence already tendered. But such evidence is permissible to fill up any inherent lacuna or defect in the evidence which has already been tendered. Filling up any gap in the evidence and filling up an inherent lacuna or defect in the evidence are provided in the Rule in contradistinction to each other. The very purpose of inquiry is to find out the facts on the best available evidence. But, in the process the course of justice shall not be deflected. Sharpening the evidence is different and distinct from filling up any gap or inconsistency in the evidence. Curing any defect in the evidence already tendered so as to make it legally perfect is different from filling up the gap in evidence. What has been done in the instant case is only production of the certified copies of the travel documents on which evidence had already been tendered by producing the un-certified computer print outs. With the leave of the Inquiry Officer, certain documents which have been obtained belatedly from the Thai Embassy also were produced. On an application for producing Exhibits P-49 and P-50 filed on 3.1.2004 by the presenting officer, the delinquent officer stated that:

"I do not want to file any reply to the application produced by the presenting side today. However, I orally oppose the tendering of the documents in evidence at this stage because the evidence of the presenting side has already been closed and the documents cannot be now tendered to fill in a lacuna in the evidence of the presenting side."

7. In this context, we may also extract the statement of the delinquent officer with regard to Exhibits P-49 and P-50 on 3.1.2004.

"I do not want to lead any evidence to rebut the documents Exhibit P-49 and P-50, which have been produced by the presenting side in the evidence today. I shall, however, rebut these documents in the course of my arguments with regard to their admissibility and late production etc."

Thus, the only objection of the delinquent officer is with regard to admissibility of the documents and not on the contents of the documents. Exhibit P-49 is a letter from the Royal Thai Embassy, New Delhi addressed to the Registrar of the High Court of Himachal Pradesh. The letter reads as follows:

"The Royal Thai Embassy presents its compliments to the High Court of Himachal Pradesh, Shimla and would like to refer to the latter's letter No. HHC/VIG/PS/2003-3585 dated 26th December 2003 requesting the Embassy to certify the

copies of documents of Shri Kiran Pal Singh.

In this connection, the Embassy has the honour to inform the High Court that it has attested a copy of Shri Kiran Pal Singh's visa application form as herewith enclosed. In addition the Embassy has the honour to further inform the latter that the Shri Kiran Pal Singh has obtained the visa No. 17908 issued on December 10, 2002 by the immigration office at Chiangmai International Airport, Thailand.

The Royal Thai Embassy avails itself of this opportunity to renew to the High Court of Himachal Pradesh, Shimla the assurances of its highest consideration."

8. Exhibit P-50 is the application for visa on arrival at Bangkok. There is no dispute with regard to the Passport and the details with regard to the address of the applicant and the date on which the application has been filed at Thailand. Having stated before the inquiry officer that the delinquent employee does not have anything to rebut on the evidence thus produced, it is absolutely futile to contend that the documents have been admitted in evidence in violation of the procedure under Rule 14(15). The production being legally permissible, it cannot be said that the inquiry has been conducted in violation of the Rules.

9. PW-1, Shri Promod Sood, Manager, Liaison and Customer Services of Thai Airways International, PCL, New Delhi, has clearly stated before the Inquiry Officer that "as per the passengers manifest, which I have brought today (Ext. P-2), a person named Singh K.P. had travelled by our flight No. TG 316, dated 10th December, 2002 from Indira Gandhi International Airport, Delhi to Bangkok. As per the passengers manifest, Singh Deepa has also travelled by this flight from New Delhi to Bangkok. As per the passengers manifest, Singh Deepa Ms and Singh K.P. Mr. returned from Bangkok to New Delhi by Flight No. TG 315 on 22nd December, 2002.".....

10. PW-2 Shri Sandeep Goel, I.P.S., Foreigners Regional Registration Officer, Delhi, referring to the passenger name recorded as retrieved from the computer system and passenger manifest, Exhibits P-3 to P-7 stated that " Sh. Kiran Pal Singh holder of Passport No. R-489789 and Deepa Singh holder of Passport No. E-3033381 have departed from Indira Gandhi International Airport Delhi on 10.12.2002 by flight No. TG 316 of Thai Airways. Both of these passengers have returned to India at I.G.I.A. Delhi on 22.12.2002 by flight No. TG 315 of the airways.".....

11. The delinquent appellant does not have, even according to his own statement, any evidence to lead in rebuttal to the documentary evidence referred to above. Thus, it is not a case of evidence adduced in violation of the Rules or it is not a case of no evidence. It is a fact and it has been also established that the delinquent was in Thailand between 10th December, 2002 to 22nd December, 2002, for which period he later submitted an application for earned leave on medical grounds. As far as the illicit relationship of Advocate Deepa Singh with the delinquent officer is concerned, the husband of Smt. Deepa Singh and also

the son of Smt. Deepa Singh have stated in detail before the inquiry authority. Though it was not necessary for us to extensively refer to facts as above, in view of the vehement contention advanced by the petitioner that it is a report on no evidence and that it is a report on evidence otherwise impermissible and that the version of the delinquent has not been taken into consideration, we have referred to the same. It is settled law that the High Court is not a Court of appeal under Article 226 of the Constitution of India on the decision of the authorities holding departmental inquiry. The Court is concerned to determine whether the inquiry held by a competent authority is done in accordance with the procedure prescribed in that behalf, whether principles of natural justice have been applied, whether there is some evidence for the inquiry officer to reasonably support the conclusion that the delinquent officer is guilty of charge and whether there is overall fairness in the procedure. The Court may also examine whether the conclusion ex-facie is wholly arbitrary or capacious that no reasonable person could ever have arrived at that conclusion."

The detailed findings quoted above, leaving no manner of doubt that this Court had dealt with all the contentions raised by the petitioner minutely and there is nothing on record to suggest even remotely that there is any error much less error apparent on the face of such findings, which may call for interference.

8. Insofar as second contention regarding bias is concerned, the same have been dealt with in the following manner:

"15. As far as the allegation of bias is concerned, admittedly, the petitioner has not approached the reviewing authority for change of inquiry officer or with any such allegation, though made an attempt before the inquiry authority. The inquiry authority having turned down the application on merits, rules permitted him to approach the reviewing authority namely the High Court. Such a step having not taken by the delinquent officer, it cannot be said that there is any basis on the allegation of bias. Therefore, the report of inquiry cannot be assailed as invalid on that count."

9. No doubt, the petitioner had approached the reviewing authority for change of Inquiry Officer on the allegation of bias, but the question is as to whether the Inquiry Officer was in fact biased. This issue has been dealt with in detail by the learned Single Judge in the following manner:

"The Inquiry Officer has the power to take on record additional evidence under sub-rule (15) of Rule 14. The application dated 31.12.2003 indicates that petitioner had raised some grievance for taking on record documents during inquiry from 22.12.2003 to 26.12.2003. There is no allegation in the application that the Inquiring Authority intentionally and with ulterior motive allowed the presenting side to place on record certain documents. In the application dated 31.12.2003, no specific violation of any rule has been alleged for taking on record the documents during inquiry by the Inquiring Authority. Simply because, some orders were passed by the Inquiring Authority, which were not to the liking

of the petitioner and according to the perception of the petitioner those orders were wrong, therefore, it cannot be said that the Inquiring Authority had conducted the inquiry in a biased manner. In the application dated 31.12.2003, it has not been stated that the documents taken on record by the Inquiring Authority have caused prejudice to the petitioner. In the application dated 31.12.2003, there is no allegation that statements of witnesses and documents were not supplied to the petitioner at the proper time. In the application, there is no allegation that Inquiring Authority has not given appropriate opportunity to the petitioner to lead defence evidence. The application dated 31.12.2003 for change of Inquiring Authority was considered by the Disciplinary Authority and was rejected. The rejection was accepted by the petitioner. He did not challenge the order of Disciplinary Authority rejecting the request to change Inquiring Authority. The Inquiring Authority has denied the allegation of bias in his reply. The petitioner has failed to establish that Inquiring Authority was biased against the petitioner."

10. Once the learned Single Judge has come to a categoric conclusion that petitioner had failed to establish that the Inquiring Authority was biased against him, which findings have been upheld by this Court, it is not open for this Court in exercise of its review jurisdiction to interfere with such findings. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the former can be corrected only by a higher forum, the latter can be corrected by exercise of review jurisdiction. It is settled law that even if a decision is erroneous even then it is not permissible for this Court in exercise of its review jurisdiction to re-hear and correct the same.

11. Lastly, insofar as the third contention regarding violation of Rule 17 of CCS (CCA) Rules is concerned, the same has been dealt with exhaustively by this Court in the following manner:

22. The requirement of Rule 17 on communication of orders infact has laid stress on the communication of the orders with respect to the findings on each article of charge. In the instant case the disciplinary authority had already communicated the findings on the articles of charge which were established before the inquiry authority.

23. No doubt, right to reason is also one of the facets of the principles of natural justice. However, under the scheme of the disciplinary proceedings as per the CCS (CCA) Rules, though an opportunity to make a representation on the report of the inquiry has been conferred on the delinquent employee, it cannot be said that the representation should be disposed of with reference to all the contentions or on the points urged in the representation. The disciplinary authority having considered the representation in the light of the report of the inquiry officer and having decided to accept and act on the report and having also decided not to dis-agree or reverse any of the findings in the report of inquiry and under the scheme of the proceedings the recommendation for imposition of major penalty being binding on the government which has passed

the formal order, it cannot be said that any prejudice has been caused to the delinquent in the process or that there is failure of justice. In other words, reasons of the inquiring authority have only been endorsed by the disciplinary authority and thus requirement of right to reason has been satisfied. Learned counsel for the appellant inviting reference to the decision of the Supreme Court in *Pragdas Vrs. Union of India*, reported in 1967 MPLJ 868, submitted that the disciplinary authority should have recorded the reasons for the findings. At paragraph 5 of the judgment, it has been held as follows:

"The reasons in support of the order had to be recorded and disclosed to the parties concerned by the Central Government; the reasons could not be gathered from the "notings" made in files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order."

24. There cannot be any dispute with regard to the principle of law as stated in the decision. But as already observed above, the disciplinary authority in the instant case has only accepted the report of the inquiring authority and its findings on the findings thus accepted and recorded, which had already been communicated to the petitioner while supplying the inquiry report, the action has been taken. Thus, there is consideration, there is recording of the finding and communication thereof. The reasons leading to the findings are already there in the inquiry report. Nothing in the report has been added, varied, implied or reversed by the disciplinary authority."

The petitioner has failed to point out as to how there is an error apparent in the aforesaid findings.

12. In case the submissions of the petitioner are tested on the touch-stone of what has been laid down by this Court in *M/s. Harvel Agua India Private Limited (supra)*, it would be seen that under the guise of review the petitioner is seeking re-hearing of the issues, which is impermissible in law. The petitioner under the guise of review is not seeking correction of any mistake but is seeking substitution of a view. Review of judgment is not maintainable if the only ground for review is that point is not dealt in correct perspective so long the point has been dealt with and answered. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition of old and overruled arguments cannot create a ground for review. The judgment sought to be reviewed has to be read as a whole and the petitioner cannot be permitted to pick up or single out a paragraph and juxtapose the same with another paragraph to contend that there is an error apparent on the face of record.

13. In view of aforesaid discussion, the petitioner has failed to make out a case

calling for interference under Section 114 read with Order 47 of the Code of Civil Procedure. Accordingly, we find no merit in this review petition and the same is dismissed, leaving the parties to bear their own costs.