Sri Gopabandhu Biswal vs Krishna Chandra Mohanty & Ors on 21 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1872, 1998 AIR SCW 1678, (1998) 3 JT 279 (SC), (1998) 2 SCR 1108 (SC), 1998 (2) UJ (SC) 114, (1998) 3 SERVLJ 102, (1998) 3 APLJ 3, 1998 (3) SCALE 226, 1998 (4) ADSC 256, 1998 (4) SCC 447, 1998 (2) SCR 1108, 1998 SCC (L&S) 1147, (1998) 79 FACLR 396, (1998) 3 LAB LN 68, (1998) 2 MAHLR 45, (1998) 2 SCT 600, (1998) 2 SERVLR 557, (1998) 4 SUPREME 201, (1998) 3 SCALE 226, (1998) 2 ESC 1182, (1998) 1 CURLR 1148, (1998) 86 CUT LT 738

Author: Sujata V. Manohar

Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
SRI GOPABANDHU BISWAL

Vs.

RESPONDENT:
KRISHNA CHANDRA MOHANTY & ORS.

DATE OF JUDGMENT: 21/04/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

[With C.A. Nos. 3456-3457 of 1996 and C.A. Nos. 3458-3460 of 1996] J U D G M E N T Mrs. Sujata V. Manohar, J.

The appellant in Civil Appeal Nos. 3451-3455 of 1995, Gopabandhu Biswal, was in military service prior to November 1972. After his release from military service, he applied for the post of Assistant

Commandant in the Orissa Military Police pursuant to an advertisement published by the Orissa Public Service Commission inviting applications from ex- military officers. He was selected and appointed as Assistant Commandant in the Orissa Military Police pursuant to the advertisement. The appellant qualified in the departmental examinations and was confirmed as Assistant Commandant with effect from 15.11.1975. Thereafter, according to the appellant, though he was eligible for consideration for promotion to the Indian Police Service cadre, he was not considered for promotion to the Indian Police Service (I.P.S.) cadre. Because according to the respondents, only Deputy Superintendents of Police in the Orissa Police force were eligible for promotion to the I.P.S. cadre. The appellant filed a writ petition in the Orissa High Court in 1982 praying for a writ of mandamus to consider him for promotion to the I.P.S. cadre. The Central Administrative Tribunal, Cuttack Bench, to which his petition was transferred after coming into force of the Administrative Tribunals Act, 1985, held that the post of Deputy Superintendent of Police and Assistant Commandant of the Orissa Military Police constituted a single cadre prior to 5th of November, 1980. His application was, therefore, allowed by the Central Administrative Tribunal by its judgment and order dated 24.12.1991. The Tribunal gave a direction that his case should be considered for promotion with effect from 1.1.1997 in respect of each year beginning therefrom till January 1980. After 4th of November, 1980, the appellant, if the is not promoted earlier, does not deserve further consideration because the post of Assistant Commandant was bifurcated into a separate cadre with effect from 5.11.1980.

In the appellant's said application before the Tribunal which was re-numbered as T.A.No. 1 of 1989 the respondents were the Union of India, the State of Orissa and 25 other respondents who had superseded the appellant for promotion to the Indian Police Service.

The State of Orissa and two other respondents filed S.L.P (C) No. 7479 of 7479 of 1992 for the purpose of challenging the decision of the Tribunal dated 24.12.1991 in the appellant's T.A.No. 1 of 1989. By its order dated 3.8.1992, the special leave petition was dismissed by this Court.

In July 1993, one and a half years after the Tribunal's decision of 24th of December, 1991 in T.A. No. 1 of 1989, respondents 1 and 2, Krishna Chandra Mohanty and Rajkishore Dash, who were in the Orissa State Police Service filed an application before the Central Administrative Tribunal at Cuttack which was subsequently Converted in to a review petition and numbered as R.A.No. 16 of 1993. These two respondents contended that the decision of the Tribunal in T.A.No. 1 of 1989 to the effect that the cadres of Deputy Superintendents of Police and Assistant Commandants in the State Military Police constituted a single cadre in the Orissa police Service till 4.11.1980 was incorrect and that on a proper examination and interpretation of all relevant documents and Governments Orders in this connection it should be held that Deputy Superintendents of Police and Assistant Commandants in Orissa Military Police never constituted a single cadre at any time. They contended that the two cadres have always been separate and that Assistant Commandants in the Orissa Military Police are not eligible for promotion to Indian Police Service. A similar Review Application No. 18 of 1993 was filed by Manmohan Praharaj and Anup Kumar Patnaik who were direct recruits to the cadre of Indian Police Service. At around the same time, O.A. Nos. 276, 277 and 278 of 1993 were filed by three applicants who were, at the material time, Assistant Commandants in the Orissa Military Police praying for granting them the benefit of the decision of the Tribunal in T.A. No. 1/89

for the purpose of promotion to the Indian Police Service.

These review petitions as well as applications were considered together by the Central Administrative Tribunal, Cuttack. The Tribunal by its impugned judgment dated 24th of June, 1994, has reviewed its earlier judgment dated 24.12.1991 in T.A.No. 1/89 on the ground of there being error apparent on the face of the record. The Tribunal has held that the two cadres of Deputy Superintendent of Police and Assistant Commandant of Orissa Military Police are separate cadres from inception and that Assistant Commandants are not eligible for promotion to the Indian Police Service, The Tribunal has thereupon dismissed the application of the appellant, Gopabandhu Biswal, in T.A.No. 1/89. It has also dismissed the three pending applications bearing O.A. Nos. 276, 277 and 278 of 1993. The present appeals are filed from the impugned judgment of the Tribunal in the two review petitions as well as the three O.As.

Was the Tribunal entitled to review its earlier judgment dated 24.12.1991 in T.A.No. 1/89? Section 22(3) of the Administrative tribunals Act, 1985 confers on an Administrative Tribunal discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure while trying a suit in respect, inter alia, of reviewing its decisions. Section 22(3) (f) is as follows:

> "Section 22(3) (f):
>
> A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely, -
>
> (a)to(e) .....
>
> (f) reviewing its decisions;
>
> (g) to (i)..... "

A civil court's power to review its won decisions under the Code of Civil Procedure is contained in Order 47 Rule 1. Order 47 Rule 1 provides as follows:

> "Order 47 Rule 1;
>
> Application for review of judgment.
>
> (1) Any person considering himself aggrieved,-
>
> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a court of Small Causes, and who, from the discovery of new and important matter or evidence which not within his knowledge or could not be produced by him at the time when the decree as passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him , may apply a review of judgment to the Court which passed the decree or made the order.

(2) ..... " The power of review which is granted to an Administrative Tribunal is similar to power given to a civil court under Order 47 Rule 1 of the Code of Civil procedure.

Therefore, any person (inter alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1(1) (a) . An appeal lies to this Court from a decision of the Administrative Tribunal. If an appeal is preferred, the power to review cannot be exercised. In the present case, a special leave petition to file an appeal was preferred from the judgment of the Tribunal in T.A.No. 1 of 1989 to this Court, and the special leave petition was rejected. As a result the order of the Tribunal in T.A.No. 1 of 1989 became final and binding. The rejection of a petition for leave to appeal under Article 136 of the petition for leave to appeal under Article 136 of the Constitution, in effect, amounts to declining to entertain an appeal, thus making the judgment and order appealed against final and binding. Once a special leave petition is filed and rejected, the party cannot go back to the Tribunal to apply for review. In the case of State of Maharashtra & Anr. v. Prabhakar Bhikaji Ingle ([1993] 3 S.C.C. 463) this Court held that when a special leave petition from the order of the Tribunal was dismissed by a non-speaking order, the main order was confirmed by the Supreme Court. Thereafter the power of review cannot be exercised by the tribunal. The Court said that the exercise of power of review by the Tribunal in such circumstances would be "deleterious to judicial discipline". Once the Supreme Court has confirmed the order passed by the Tribunal , that becomes final. In Sree Narayana Dharmasanghom Trust v. Swami Prakasananda & Ors. ([1997] 6. S.C.C. 78) the above decision was reaffirmed. This Court held that after an order of this Court dismissing the S.L.P. in limine from a judgment of the High Court, the High Court cannot review it. The Court followed the earlier judgment in State of Maharashtra & Anr. v. Prabhakar Bhikaji Ingle (supra).

In the case of K. Ajit Babu & Ors. v. Union of India & Ors. ([1997] 6 S.C.C. 47) to which one of us was party, this Court examined Section 22(3) (f) of the Administrative Tribunals Act, 1985 and held that an application for review under that section attracts the principles contain in Order 47 Rule 1 of the Code of Civil Procedure. Therefore once an S.L.P is preferred and dismissed, review is not permissible. The same view has been taken by this Court in Raj Kumar Sharma & Ors. etc. etc. v. Union of India Y Ors. etc. etc. (1995 (2) SCALE 23). The Court observed in that case that the Tribunal was in error in entertaining a review petition and allowing it after the special leave petition against its main judgment had been dismissed by this Court and the review petition filed in this Court against the dismissal of the special leave petition had also been dismissed. It was undisputed that the grounds on which the review was sought before the Tribunal was a ground taken in the special leave petition as well as in the review petition filed in this Court. In such a situation, to say

the least, it was wholly inappropriate for the Tribunal to sit in judgment on the merits of this Court's order dismissing the special leave petition giving finality to the Tribunal's main order. In the present case, therefore, on the dismissal of the special leave petition by this Court, the judgment of the Tribunal in T.A. No. 1 of 1989 became final and binding as between the parties and the Tribunal had no power to review that Judgment thereafter.

In the present case, however, it is urged that the four applicants who filed the two review petitions before the Tribunal were not parties to the main petition. They were also not parties to the special leave petition filed before this Court which was dismissed. However they are parties aggrieved and hence are entitled to apply for a review of the main judgment of the Tribunal. It is contended by them that the judgment of the Tribunal holding that the two cadres of Deputy Superintendent of Police and Assistant Commandant were a single cadre till 5.11.1980, has affected the chances of promotion of the applicants and, therefore, the appellants, being persons aggrieved, are entitled to maintain such review petitions when they had not been parties to the earlier judgment as well as the earlier special leave petition. We will assume for the time being that the applicants are persons aggrieved. Even so, the question is whether they can have a judgment which has attained finality by virtue of an order of this Court, set aside in review. There is no doubt that as between the parties to the main judgment, the judgment is final and binding. The respondents, State of Orissa and Union of India, are, therefore, bound to give effect to the judgment of the Tribunal in T.A.No. 1 of 1989 in the case of Gopabandhu Biswal. If this is so, can a third party by filing a review petition get that same judgment reviewed and obtain an order that Gopabandhu Biswal is not entitled to the benefits of the directions contained in the main judgment since that judgment is now set aside? In our view this wi wholly impermissible. It will lead to re-opening a matter which has attained finality by virtue of an order of this Court. The applicants, even if they are persons aggrieved, do not have, in the present case, a right of review under any part of Order 47 Rule 1. Even under Order 47 Rule 1(2), the party not appealing from a decree or order can apply for review only on grounds other than the grounds of appeal which were before the appellate court, and during the pendency of the appeal. In the present case all the grounds which were urged in review were, in fact, urged before the Tribunal at the time when the Tribunal decided the main application and they were also urged by the petitioner in the special leave petition which was filed before this Court. The special leave petition has been dismissed. The same grounds cannot be again urged by way of a review petition by another party who was not a party in the main petition.

According to the applicants certain documents though produced before the Tribunal were not noticed by the Tribunal in deciding the main matter. Even so, once a judgment of a Tribunal has attained finality, it cannot be reopened after the special leave petition against that judgment has been dismissed. The only remedy for a person who wants to challenge that judgment is to file a separate application before the Tribunal in his own case an persuade the Tribunal either to refer the question to a larger Bench or, if the Tribunal prefers to follow its early decision, to file an appeal from the Tribunal's judgment and have the Tribunal's judgement set aside in appeal review is not an available remedy.

Undoubtedly when the Tribunal interprets Service Rules and Regulations, the interpretation so given may affect other members of that Service - past, present or future. Once can understand a

wider meaning in this context being given to the phase "person aggrieved", thus enlarging the right of persons to intervene either at the hearing before the Tribunal, or in appeal, or for filing a review petition. Nevertheless, this right must be exercised at the appropriate time and in accordance with law. A review petition must be within the scope of Section 22(3) (f) of the Administrative Tribunals Act read with Order 47 Rule 1 and must comply with the Rules framed under the Administrative Tribunals Act. They preset review applications are not within the principles laid down in Order 47 Rule 1. They also do not comply with the relevant Rules. Rule 17 of the Central Administrative Tribunal (procedure) Rules, 1987 prescribes, inter ALIA, that no application for review shall be entertained unless it is filed within thirty days from the dated of the receipt of a copy of the order sought to be reviewed. In the present case the review petitions were filed one and a half years after the main judgment was delivered and one year after the special leave petition was dismissed. We do not find any explanation of this delay.

It is difficult to include the applicants in the review applications in the category of "persons aggrieved". The main applicant i.e. the present appellant-Biswal had joined as party respondents all those persons who had superseded him for selection to the Indian Police Service Since they would be persons affected in case he succeeded in his application. The Tribunal had directed that Biswal be considered for promotion between 1977 and 1980 and not thereafter. During this period, the two applicants in review application No. 16 of 1993 were nowhere within the zone of consideration for promotion to I.P.S. One of the applicants joined the police service only in 1974 and was not eligible for further promotion till 1982. The other applicant, though eligible for promotion, was on account of his rank in the seniority list, not within the zone of consideration at any time prior to 5.11.1980. As a matter of fact the two applicants in review application No. 16 of 1993 were selected for promotion to I.P.S. only in 1993 when they were included in the select list of 1993. Therefore, they could not have been made parties in T.A. No. 1 of 1989. At that point of time, these applicants had only a chance of promotion in future. This does not confer and legal right on these applicants and they cannot be considered as parties aggrieved by the impugned judgment. however, leniently one may construe the term 'party aggrieved', a person not directly affected cannot be so considered. Otherwise for years to come, every person who becomes eligible for promotion will be considered a party aggrieved' when the Tribunal interprets any Service Rule such as in the present case. Only persons who are directly and immediately affected by the impugned order can be considered as 'parties aggrieved' under Section 22(3) (f) read with Order 47 Rule

1. The same is the case with the applicants in Review Application No. 18 of 1993. These two applicants in the Review Application No. 18 of 1993 were direct recruits to the Indian Police Service of 1975 and 1976 batches. The quota for direct recruits is different and these applicants were not concerned with the appointments made within the quota of promotes from the State Police Service. Therefore, it is difficult to look upon them as persons aggrieved. If at all they would be affected by the promotion given to the original applicant-Biswal, that would be in respect of their chance for promotion to the next higher post. This does not confer any legal right on these applicants. They cannot, therefore, be considered as persons aggrieved. In our view the Tribunal was not entitled to, and ought not to have entertained the review applications once the special leave petition from he main judgment and order had been dismissed.

The Tribunal also had before it, three other applications which were filed under Section 19 of the Administrative Tribunals Act 1985. The Tribunal had dismissed these applications in view of having allowed the review petitions and set aside its earlier order in T.A. No. 1 of 1988. In view of the fact that the Tribunal's judgment in review applications cannot be sustained, the Tribunal will be required to examine these three applications filed before it on merit and dispose them of in accordance with law.

In deciding these applications, the Tribunal cannot ignore its earlier judgment. "The use of precedent is an indispensable foundation upon which to decide what is the law and its application the individual case; it provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as provide a basis of orderly development of legal rules". (Halsubry Fourth Edn. Vol. 26 para 573). If the Tribunal decides to follow its earlier judgment the respondents in these applications can file petitions for leave to appeal if they so desire; and any other person aggrieved may also, with the leave of the Court, apply for special leave to file an appeal. In the event of the Tribunal coming to a conclusion that its earlier judgment requires reconsideration, the Tribunal can refer the question to a larger Bench. In either case the persons aggrieved can apply and intervene to put forward their point of view.

We, therefore, allow these appeals, set aside the order of the Tribunal in review applications and remand the Original Applications Nos. 276, 277 and 278 of 1993 for fresh consideration by the Tribunal in accordance with law. There will, however, be no order as to costs.