



**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

R.A/350/015/2019  
(OA/350/524/2019)  
M.A/350/353/2019

Date of Order: 23.3.2020.

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member**

**KARTIK SINGH  
VS.  
UNION OF INDIA & ORS.  
(EASTERN RAILWAY)**



For The Applicant(s): Mr. A. Chakraborty, counsel  
For The Respondent(s): Mr. K. Sarkar, counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (J):

The order passed in O.A is as under:

*"12. In the aforesaid backdrop, the Disciplinary Authority having decided in terms of liberty granted by this Tribunal to conclude the enquiry proceedings initiated against the applicant, we permit the same to be concluded in accordance with law with an appropriate order which be issued within a period of four months from the date of communication of this order."*

2. The Review Application has been preferred to seek review of the order on the following grounds inter alia that,

(i) This Court failed to take note of the facts that in spite of specific direction of this Tribunal for production prior concurrence of CVC in initiating the Disciplinary proceeding against the applicant, nevertheless the same had been produced.

(ii) This Tribunal had been pleased to pass the order and judgment dated 03.07.2019 by making observations which did not arise from the pleadings and which was not the subject matter of the issue and thereby a case has been made out which was not pleaded.

(iii) This Court ought to have considered the pleadings made in the Original Application and submissions made by the applicant in support thereto to the effect that the disciplinary action was initiated against the applicant based on an anonymous complaint without obtaining any concurrence from the CVC. The point

raised by the applicant stating the impermissibility of initiation of proceeding in absence of the prior concurrence of CVC had been overlooked by this Tribunal and no whisper was made in the order and judgment dated 03.07.2019 about the said issue addressed before this Tribunal.

iv) The Court proceeded on the fact of the communication dated 20.11.2018 in verbatim of the order of the Disciplinary authority dated 08.11.2018 and thereby observing the unsustainability of the contention of the applicant as to non-extension of opportunity to assail the order of the Disciplinary authority but the said issue was not germane in the original application.

v) The Court misdirected itself by erroneously considering the allegation of bias raised by the applicant against the Inquiring authority and thereby overlooked the main issue of the original application regarding impermissibility of the initiation of the disciplinary proceeding against the applicant on an anonymous complaint without obtaining the prior concurrence of the CVC.

vi) The Tribunal had been pleased to pass the Order and judgement dated 03.07.2019 by traversing beyond the pleadings in the Original application and submission of the parties before the Court and as such the order and judgment dated 03.07.2019 suffers from the errors that have been apparent on the face of the records.

vii) This Court had passed the order and judgment dated 03.07.2019 in oblivion of the main issue involved in the original application.

viii) The Tribunal overlooked the issue of violation of the laid down procedure the DOPT OM as well as the Circulars of the Commission and manual which the General Manager, Eastern Railway failed to examine even after the direction of the Tribunal in order and judgment dated 24.08.2018 as well as the impermissibility of the issuance of the Charge Memorandum dated 22.12.2015 without having the concurrence of the CVC.

3. The Id. counsels were heard and records were perused.

4. We note that in the O.A this Tribunal referred to the decision of the Hon'ble High Court in WPCT 80 of 2018 that;

"In course of hearing today, Mr. Das Poddar has produced documents before us to show that it was not a case of an anonymous complaint being received by the railways directly from the complainant; on the other hand, the complaint was received by the Commission and the Commission itself had forwarded the complaint



for necessary action to the Railway Board. It is only upon the Railway Board having considered the complaint to be serious that letter dated July 10, 2013 was issued by the Secretary/Vigilance Railway Board raising a query as to whether the complaint had been investigated earlier, if received; in the event of there being an investigation, copy of the report was also directed to be furnished:

It is submitted before us that acting upon the aforesaid letter of the Railway Board, disciplinary proceedings were initiated against the petitioner.

Having regard to the disclosure, as aforesaid, we do not consider it proper to interfere with the order of the tribunal. The writ petition is disposed of, without any order for costs.

We must, however, record at this stage that a decision taken by the General Manager, Eastern Railway, being the petitioner's disciplinary authority, has been brought to our notice. Such decision was the result of compliance of the order of the tribunal. Having regard to the developments subsequent to passing of the order of the tribunal, we express no opinion on the merits of the rival claims. It shall be open to the petitioner to pursue such remedy as is available to him in accordance with law, if at all he is dissatisfied with the order of the general manager.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously."

(Emphasis added)



This Tribunal also noted that "the order of the Hon'ble High Court was assailed before the Hon'ble Apex Court by the applicant herein in Special Leave to Appeal(C) No.4904/2019. The Hon'ble Apex Court while dismissing the SLP on 22.02.2019 recorded as under:-

*"We do not find any good ground warranting interference with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution of India."*

Further that, a letter dated 16.04.2019 issued to him by the Disciplinary Authority (D.A. in short) which according to the applicant was not the decision of D.A. taken prior to its communication. The letter dated 16.04.2019 is set out hereunder (extracted with emphasis):-

*"The Hon'ble CAT/Kolkata disposed of the subject OA on 24.8.2018 with direction upon the disciplinary authority in the following manner:*

*"16. In the aforesaid backdrop we remand the matter back to the disciplinary authority to examine satisfaction of the conditions enumerated in the CVC circular supra, before proceeding further with the matter.*

*17. Based on its revelations on scrutiny, the disciplinary authority shall be at liberty either to withdraw the charge memo or to proceed with it."*

Hon'ble CAT in its order also observed that "However, we cannot remain oblivious to the Circular dated 14<sup>th</sup> July, 2016 which says that even anonymous

*complaints can be verified if its allegations are serious and Hon'ble Apex Court's decision legitimising the practice of anonymous whistle blowing. [(2010)8 SCC 281]."*

*In view of the aforesaid order of the Hon'ble CAT/Kolkata, I, the undersigned, the disciplinary authority, have examined that CVC itself has sent copy of complaint received in their office to Railway Board/Vigilance for taking necessary action under the subject as source information vide CVC's office memorandum issued under their No.18899/13/Vig.1/218817 dated 08.07.2013. Railway Board/Vigilance in para -1 of their letter dated 10.7.2013 advised GM/Vigilance/Eastern Railway to look/inquire into the complaint as source information. As per advice of Railway Board/Vigilance, Vigilance/Eastern Railway, considering the said 'anonymous' complaint as source information regarding misuse of pass and conducted a Preventive check at the pass issuing office of Asansol under DRM/ASN. Based on the facts brought out in the investigation report, you were prima facie found responsible for misuse of Pass in irregular manner and hence, disciplinary proceedings were initiated. It is to mention further that since CVC itself had sent copy of complaint received in their office to Railway Board for taking necessary action, it was redundant to seek concurrence from CVC. The aforesaid facts were also brought to the notice of the Hon'ble High Court/Kolkata which had recorded these facts in its order dated 7.12.2018 in WPCT No.80/2018.*

*Further, CVC in para 5(iii) of their Circular dated 7.3.2016 issued clarifications that "where action was initiated on anonymous/pseudonymous complaints between the period 11.10.2002 and 25.11.2014 with prior concurrence of CVC but is pending, further action is permissible on such complaints." From the above it would be seen that action i.e. investigation into complaint was initiated within the period specified above, and hence, further action i.e. disciplinary action was accordingly initiated on such complaint in a justified and lawful manner.*

*In view of the above, I, the undersigned, being the disciplinary authority, have rightfully decided that the disciplinary proceedings are to be continued to its logical conclusion as per extant norms and rules. Accordingly, I.O. was advised to continue inquiry into the charges instituted in the disciplinary proceedings against you."*

5. We would further discern that the applicant had sought for the following reliefs:

*"Your petitioner most humbly pray that Your Lordships will graciously be pleased to review the Order and Judgment dated 03.07.2019 passed by the Hon'ble Mrs. Bidisha Banerjee and the Hon'ble Dr. Nandita Chatterjee passed in O.A No. 350/00524 of 2019 and to pass such further or other Order or Orders and/or Direction or Directions as Your Lordships may deem fit and proper."*

We noted in the O.A that, in order to give him a fair chance we had called for the records. The respondents when asked to furnish such decision, produced a file containing the decision of the Disciplinary Authority dated 08.11.2018 i.e. taken prior to its communication dated 20.11.2018 which is verbatim similar to the one communicated on 20.11.2018. Therefore, the contention of the applicant that due to non-furnishing of the decision of the Disciplinary Authority, taken in terms of the



order passed in O.A.1309/2016, the applicant is prevented from challenging the decision, is untenable.

We also noted that the Section Officer of Central Vigilance Commission issued an office memorandum dated 08.07.2013 in regard to "Source information against Railway official" and forwarded the same to the Railway Board for necessary action" and disciplinary action initiated by issuance of a charge sheet that is challenged in the present O.A. , cannot be termed as irregular one in view of the fact that the charges have been drawn up not on the basis of the complaint but on the basis of the following documents listed as Annexure-III to the charge memo which reads as under :-



1. Reports of Dataware house of Indian Railways;
2. Requisition slips 2 nos. as booked from SBG-PRS;
3. Working chart of Train No.13404 of 3AC class for Date of journey 29.01.2013;
4. Privilege Pass No.348115 issued on 28.01.2013 by Ch. OS/Pass Section/ASN, E. Rly as deposited by ShriKartik Singh;
5. Certified copy of EQ register as maintained in MLDT Division;
6. Certified photocopies of Counterfoils of Privilege Passes issued to ShriKartik Singh, the then DCM/ASN."

Having noticed that the petition alleging bias was considered and EO was changed and that the Disciplinary Authority having decided in terms of liberty granted by this Tribunal to conclude the enquiry proceedings initiated against the applicant, this Tribunal allowed the proceedings to be concluded in accordance with law.

6. In view of the enumerations supra, the grounds on which review has been sought for, that,

(i) This Tribunal misdirected itself by erroneously considering the allegation of bias and thereby overlooked the main issue of the original application regarding

impermissibility of the initiation of the disciplinary proceeding against the applicant on an anonymous complaint without obtaining the prior concurrence of the CVC, is not tenable.

ii) This Tribunal overlooked the issue of violation of the laid down procedure the DOPT OM as well as the Circulars of the Commission and manual which the General Manager, Eastern Railway failed to examine, is not tenable.

(iii) The point raised by the applicant stating the impermissibility of initiation of proceeding in absence of the prior concurrence of CVC had been overlooked by this Tribunal "and no whisper was made in the order and judgment dated 03.07.2019 about the said issue addressed before this Hon'ble Tribunal" is not tenable.



7. It is worth mentioning that the scope of review of an order is provided under order 47 Rule 1 CPC which runs as follows:-

"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, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was 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 for a review of judgment to the court which passed the decree or made the order."

8. In substance, a review is maintainable on the following grounds, as stipulated by the statute:-

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- ii) Mistake or error apparent on the face of the record;
- iii) Any other sufficient reason.

9. Tribunal's power to review its own order in such grounds as enumerated supra, is well recognised. [Judgment of Hon'ble Apex Court in case of **Gopal Singh vs. State Cadre Forest Officers' Assn. and Others, (2007)9 SCC 369**].

10. The Hon'ble Apex Court on numerous occasions had deliberated upon the very same issue arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. In **AribamTuleshwar Sharma v AribamPishak Sharma,(1979) 4 SCC 389=AIR 1979 SC 1047**, the apex court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code of Procedure was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to the apex court, it was held as under:

*"It is true as observed by this Court in Shivdeo Singh v State of Punjab, AIR 1963 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."*  
(Emphasis added)

11. In **Parsion Devi & Ors. vs. Sumitri Devi & Ors., (1997) 8 SCC 715**, the Hon'ble Apex Court opined that:-

*"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".*  
(Emphasis added)

12. The Hon'ble Apex Court also in the case of **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.**, reported in **(2008) 8 SCC 612** held as under:-

*"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debitojustitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.*

*22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."*



13. The principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

14. In view of the above, the R.A. fails. No costs.

(Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

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