CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

RA No.8/2004 in
OA No.22/2001

New Delhi this the 9th day of July, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. R.K. UPADHYAYA, MEMBER (ADMNV)

Shri N.N.S. Rana,
Ex. Chief Personnel Officer,
North Central Railway,
Allahabad (UP). -Review Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India: through

1. The Secretary,
   Railway Board,
   Ministry of Railways,
   Rail Bhawan,
   New Delhi.

2. The Chairman,
   Railway Board,
   Rail Bhawan,
   New Delhi.

3. The General Manager/O.S.D.
   North Central Railway,
   Allahabad (UP). -Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Mr. Shanker Raju, Member (J):

The present RA is directed against an order passed by the Tribunal on 24.10.2003, dismissing the OA on merits.

2. Learned counsel for review applicant Sh. B.S. Mainee contends that one of the grounds to challenge the enhanced penalty of removal by the appellate authority was that the UPSC was consulted and its advice was disagreed to without furnishing a copy of the advice before passing a final order in appeal, enhancing the punishment. In this view of the matter it is contended that after the arguments were heard case law has been allowed by the Court. The case law filed included decision of the Apex Court in Union of

India v. Charanjit Singh Khurana, SLP (C) No.9816/2002 decided on 9.5.2002 as well as the decision of the Apex Court in State Bank of India v. D.C. Aggarwal, JT 1992 (6) SC 673 and being a binding precedent and the ratio mandated furnishing of advice of the UPSC on disagreement by the concerned authority before imposition of penalty has not been considered and the order passed by the Tribunal is per incuriam of the decision of the Apex Court which is a valid ground for review. In support, learned counsel of review applicant cited decision of the Apex Court in Shankar K. Mandal and Ors. v. State of Bihar & Ors., 2003 (2) SCSLJ 35 as well as the decision of the Mumbai Bench of the Tribunal in S.M. Bhagwat v. Union of India, 2001 (2) SLJ (CAT) 91.

3. It is in this backdrop stated that the decision in support of the above contention in S.K. Pandey v. Union of India, ATJ 2003 (1) CAT (PB) 38, which has considered the decision in Charanjit Singh Khurana's case (supra) was not considered and no reasons have been assigned as to non-applicability of the aforesaid decision being a binding precedent it was incumbent upon the Tribunal to have considered the same.

4. On the other hand, respondents' counsel Sh. V.S.R. Krishna vehemently opposed the RA and contended that through this RA review applicant seeks to re-argue the matter as if in appeal, which is not within the scope of Section 22 (3) (f) of the Administrative Tribunals Act, 1985. According to him the decision in Pandey's case (supra) and the grounds raised had been considered and as such the decision even if erroneous in law cannot be aground

for review as there is no error apparent on the face of record, the review is not a remedy admissible to applicant in law.

5. We have carefully considered the rival contentions of the parties and perused the material on record. It is a trite law that review is maintainable on an error apparent on the face of record or on discovery of new material, which even exercise of due diligence, could not be procured by the concerned party.

6. The Apex Court in **Meera Bhanja v. Nirmala Kumari Choudhury**, AIR 1995 SC 455 held that "error apparent on the face of record" means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. Review Court reappreciating entire evidence and reversing finding of Appellate Court, Review Court exceeded its jurisdiction.

7. In **Ajit Kumar Rath v. State of Orissa & Ors.**, 1999 (9) SCC 596, the following observations have been made:

> "Power of review available to an Administrative Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person, on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be sought merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stares in the face

without any elaborate argument being needed for establishing it. the expression "any other sufficient reason" used in Order 47, Rule 1 means a reason suffciently analogous to those specified in the rule." page 144 A-A

8. In Lily Thomas v. Union of India, 2000 (6) SCC 224 the following observations have been made by the Apex Court:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji held that the power of review is not an inherent power. It must be conferred by law either disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgement would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the court from rectifying the error. This court in S. Nagaraj vs. State of Karnataka held: (SCC pp 619-20 para 19)

"19. Review literally and even judicially means re/examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistake or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prighwi Chand Lal Choudhury vs. Sukhraj Rai the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh that an order made by the Court was final and could not be altered:

'.....nevertheless, if by misprision in embodying the judgements, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in ... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgements, and this court must possess the same authority. The Lords have however gone a stemp further, and have corrected mistakes introduced through inadvertence in the details of judgements; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgement or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgement or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is n o ground to review the earlier judgement passed by a Bench of the same strength."

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgements have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgement."

9. In **Subhash v. State of Maharashtra**, 2002 (1) SCC 28 the following observations have been made by the Apex Court:

"The scope of consideration before the tribunal was very limited. Inasmuch as this Court had found that the appellant did possess the necessary qualification as per the rules and the tribunal having found he was entitled for appointment in original application 94/1995, there is no justification for the tribunal to have reviewed the matter once over again, particularly, when the scope of review very much limited under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 as is vested in a civil court under the code of Civil Procedure. The tribunal could have interfered in the matter if the error pointed out, is plain and apparent. But the tribunal proceeded to re-examine the matter as if it is an original application before it. This is not the scope of review."

10. In **Surjit Singh v. Union of India**, (1997) 10 SCC 592 the following ratio was laid down:

"7. In the light of these directions, it is obvious that the Govt. of India had prepared the seniority list. The contention of the promotees which was found acceptable to the Tribunal that preceding the date of amendment the Government was devoid of power to carry forward all unfilled vacancies to the direct recruits and that all these vacancies are meant to be thrown open to the promotees, is clearly a misinterpretation of the rules and on that basis the directions came to be

issued by the Tribunal. This court had suggested on earlier occasion that vacancies meant for the direct recruits may be carried forward for two years after the recruitment year and thereafter the unfilled vacancies would be thrown open to the respective cadres. Under these circumstances, the view of the Tribunal is clearly illegal; unfortunately, the Tribunal has wrongly stated that if they commit mistake, it is for this Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. When a patent error is brought to the notice of the Tribunal, the Tribunal is duty-bound to correct, with grace, its mistake of law by way of review of its order/directions."

11. In **K.G. Derasari v. Union of India,** 2002 SCC (L&S) 756 the Apex Court has observed as under:

"7. In the light of these directions, it is obvious that the Govt. of India had prepared the seniority list. The contention of the promotees which was found acceptable to the Tribunal that preceding the date of amendment the Government was devoid of power to carry forward all unfilled vacancies to the direct recruits and that all these vacancies are meant to be thrown open to the promotees, is clearly a misinterpretation of the rules and on that basis the directions came to be issued by the Tribunal. This court had suggested on earlier occasion that vacancies meant for the direct recruits may be carried forward for two years after the recruitment year and thereafter the unfilled vacancies would be thrown open to the respective cadres. Under these circumstances, the view of the Tribunal is clearly illegal; unfortunately, the Tribunal has wrongly stated that if they commit mistake, it is for this Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. When a patent error is brought to the notice of the Tribunal, the Tribunal is duty-bound to correct, with grace, its mistake of law by way of review of its order/directions."

12. In **Union of India v. Tarit Ranjan Das,** 2004 SCC (L&S) 160, the following was laid down:

"9. Strangely, the Tribunal in the review petition came to hold that the Commission had not based its conclusion on any data. It is trite law that it is not open for any court to sit in judgement as on appeal over the conclusion of the Commission. Further, the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work.

> On the contrary, the person who asserts that there is equality has to prove it. The euqlity is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant."

13. In **Shankar K. Mandal** (supra) the Apex Court while quoting another decision observed as under:

> "14. It is also not open to contend that a plea raised was not considered. In Daman Singh and others etc. v. State of Punjab & Ors. (AIR 1985 SC 973) it was observed (in para 13) as follows:
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> > "The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memorandum of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgement of the subordinates court was argued before that court or not.""

14. From the reading of the above case-laws the following conclusions are discernible:

i) In review under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 no party is entitled to make a grievance that grounds not argued were not considered. If a ground raised is not considered,

Tribunal's attention may be drawn in review. This is with a view to save wastage of time in enquiring the matter whether a ground was argued before the Court or not?

ii) The Tribunal cannot sit in appeal or judgment over the conclusions arrived at in the order to substitute a different view.

iii) Although doctrine of precedent under Article 141 of the Constitution of India declared by the Apex Court as a binding precedent, law of the land, if the decision of the Apex Court has not been considered being a binding precedent the same is a good ground for review. The Tribunal is bound when a patent error is brought to the notice as a duty to correct with grace by way of review.

iv) A mistake should be apparent on the face of the record and should not involve a long drawn process to find it. Re-examination of the matter is not permissible in law.

v) Review is not an appeal in disguise. It judicially connotes re-examination or reconsideration. This power can be exercised for correction of a mistake but not to substitute a view. A mere possibility of two views on the subject is not a ground for review. Review cannot be sought for fresh hearing or arguments or correction of an erroneous view taken. An erroneous view in law is subject to further remedy.

15. If one has regard to the above, the ground for review raised before us is non-consideration of the decision of the Apex Court in **Charanjit Singh Khurana's** case (supra) and non-consideration of the ground of non-furnishing of advice of the UPSC by the appellate authority before an order of enhanced penalty was imposed, particularly in the circumstances when the UPSC had disagreed to such an enhancement.

16. In para 6 of the order passed by the Tribunal this ground has been mentioned as one of the grounds taken by applicant by recording the following observations:

> "....He has also submitted that the advise of UPSC dated 11.7.2002 had not been given to the applicant before the appellate authority passed the order. He has relied on Tribunal's order in **S.K.Pandey** vs. **UOI & Ors** (2003 (1) ATJ 538). Learned counsel has submitted that this alone is sufficient reason to vitiate the appellate authority's order as the material was not given to the applicant on which they have relied upon....."

17. We find the following discussion and consideration by the Tribunal to this ground in para-16 of the order:

> "...The copy of the UPSC's advice had been given to the applicant along with the impugned order dated 26.12.2002. The applicant had relied upon the orders of the Tribunal in S.K.Pandey's case (supra). In the present case, the applicant had been issued memorandum/show cause notice dated 6.1.1994 giving him an opportunity to explain why the penalty already imposed on him should not be enhanced to removal from service. He has submitted the reply dated 3.1.2002 and supplementary reply dated 23.3.2002 to the show cause notice, in terms of the liberty granted by the Tribunal's aforesaid order dated 14.3.2002. In the impugned order passed by the appellate authority/President, he had submitted that the appeal as well as the replies given by the applicant had been considered in consultation with the UPSC. The reasons for disagreement with

Commission's advice dated 11.7.2002 had also been given in the appellate authority's order. Some of these reasons are worth mentioning, namely, (1) that the power of the appellate authority under the Rules is of wide amplitude and does not envisage any charge-wise compartmentalisation of the Departmental proceedings. We have already observed above that this reasoning cannot be held to be invalid....."

18. From the above, we are of the considered view that the Tribunal has considered the decision in **S.K. Pandey's** case (supra), which, inter alia, mentioned the case of **Charanjit Singh Khurana** (supra) decided by the Apex Court. A reasoning has been given to reject the plea of applicant based on the aforesaid decision. Though we find that applicant has filed several decisions in support, yet we cannot take a view that the decision of the Apex Court has not been considered. If the decision is considered and an erroneous view has been taken we cannot substitute the view in review. The proper remedy is by way of appeal.

19. Though non-consideration of decision of the Apex Court is a good ground for review and an error apparent on the face of record but once the decision of the Apex Court is considered and reasons to deny the benefit on that ground are recorded, we cannot go into the sufficiency of reasons as this would amount to re-examine the judgment and sitting over it as an appeal. We cannot substitute the views already taken by the Tribunal. This is not within the scope of the review.

20. An error apparent on the face of the record cannot be an error in law. A decision of the Apex Court may be taken either in right perspective or otherwise would preclude substitution of our views in review. Having regard to the decisions cited above, as a long drawn process is to

be adopted and the error is not apparent on the face of record and is reflected from mere reading of the orders passed by the Tribunal cannot be an error apparent on the face of record to warrant our interference. If the review applicant has any grievance remedy lies elsewhere.

21. If the Tribunal takes into account the decision of the Apex Court and records a finding whether a correct view has been taken or the decision has been distinguished or not would not come within the purview of the review. Moreover, the decisions of the Apex Court cited by applicant lay down proposition of law to the extent that the copy of the advice of the UPSC shall be given on disagreement by the disciplinary authority before a final order is passed. Whether this ratio would mutatis mutandis apply at an appellate stage is a question which requires long drawn process and deliberations?

22. In the result, for the foregoing reasons, RA is not maintainable in view of Section 22 (3) (f) of the Administrative Tribunals Act, 1985 and is accordingly dismissed. No costs.

(R.K. Upadhyaya)
Member (J)

(Shanker Raju)
Member(A)

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