

Central Administrative Tribunal
Principal Bench: New Delhi

RA 99/96
OA 755/93

New Delhi this the 21st day of February 1997.

Hon'ble Mr. N. Sahu, Member(A)

Shri Kewal Krishna Vijn
A-71 Hil Housing Group Society
Plot No.17-S.13 Rohini
Delhi -110 085.

... Review Applicant

(By advocates Shri G.D.Bhandari)

Versus

Union of India through

1. The General Manager
N.F. Railway, Maligaon
Guwahati.
2. The Divisional Railway Manager
N.F. Railway, Alipurduar Jn.
3. The Divisional Railway Manager
N.F. Railway, Katihar.

... Respondents.

(By advocates Shri O.P.Kshatriya)

ORDER

Hon'ble Mr N. Sahu, Member (A)

Heard Shri G.D. Bhandari, learned counsel for the applicant and Shri O.P.Kshatriya, learned counsel for the respondents. After going through the petition for condonation of delay, the delay is condoned.

This review application filed on 28.5.96 seeks review of this Tribunal's order dated 26.3.96 on the following grounds:

The applicant was promoted to officiate as JFI on ad-hoc basis for a limited period of 60 days only. He retired as Senior Fuel Inspector in the grade of Rs.2375-3500 on 30.9.91. He was allotted a railway quarter at Katihar in 84 which remained in his possession inspite of transfers till his retirement. All the orders of his transfer did not contain the

45

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clause that it was a permanent one. His claim is that the transfers being temporary did not entail vacation of quarters under departmental instructions. He applied for another quarter No.412/A when it fell vacant on 31.1.90. His representation dated 17.1.90 was not heeded. It is the contention of the learned counsel for the applicant that there is no basis or evidence either recorded or documentary produced by the respondents, which has been made the foundation for reaching the conclusion that the transfer was permanent. Transfer on adhoc promotion for limited periods would impliedly be only a temporary transfer and not a permanent transfer. It is urged that the findings of the Tribunal are based on conjectures and surmises. Shri G.D.Bhandari, learned counsel further urged that there is no evidence brought on record to substantiate the conclusion that there was regularisation of the applicant after his initial transfer from Katihar. He also urged that the respondents themselves allowed the applicant to stay on in the quarter even after his retirement for a period of 4 months. This itself would show that the earlier alleged unauthorised occupation has been ignored or excused. The exclusion of Katihar from the North-Eastern regions as ineligible for the benefits is said to be not supported by any evidence.

2. All the contentions of the learned counsel were met by Shri Kshatriya, learned counsel for the respondents, besides highlighting the limitations of review spelt out by the Apex Court in 1975 (1) SLR p.773. It was made clear that the order dated 29.10.83 extending the ad-hoc promotion and shifting the applicant from Katihar to Alipur was of two parts - one promotion order and the other transfer order. The promotion of the applicant was ad-hoc but the transfer order was permanent. This Tribunal had gone into all the contentions raised before it and had come to the finding that the ad-hoc promotion orders, the transfer order for limited periods and the transfer grant drawn by the applicant confirmed that the transfer was on permanent basis and the applicant was fully aware of the same because he had drawn the transfer allowance (TA) which is admissible only to one

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is transferred on a permanent basis. The Tribunal also gave the finding that though the promotion was adhoc, it was subsequently regularised in the scale of Rs. 2375-3500. It is also noticed that since his posting at Alipur in 1984, he remained at the station and ultimately retired from the place in 1991 in the same division. The job of the applicant was such that he worked under the same DRM (Mechanical) but he had to shift his place of duty/^{to} several outlying stations. It is urged by the learned counsel for the respondents that on a temporary transfer he gets TA from the day he leaves the station till he is reposted at the same station from where he had gone on temporary transfer. On temporary transfer, the applicant gets his pay from his old office. In this case, the applicant had drawn his pay from a new place where he had been posted and it was not a case of drawing TA, but he had taken permanent transfer advance. Obviously, there cannot be a temporary transfer from 1984 to 1991. This, coupled with the fact tht the applicant drew transfer and packing allowance and did not claim any DA, confirm that it was not a temporary transfer. Keeping in view all the above facts and circumstances, the Triunal came to the conclusion that it was not a temporary transfer but a permanent transfer. The whole purpose of the order is to decided this issue besides the question of unauthorised occupation of the quarter.

3. It is settled law that there are several limitations to the power of review. Only on the discovery of a new and important matter or an evidence which could not be produced when the order was made even after due diligence that a review can be resorted to. The power of review can also be exercised when there is a mistake or error apparent on the face of the record. It may not be exercised when the decision is claimed to be erroneous on merits (A.T.Sharma Vs. A.P.Sharma AIR 1979 SC 1047). The entire exercise of the learned counsel for the applicant was only an attempt to re-adjudicate the

case on merits and to re-appreciate the existing evidence. This cannot be permitted. Even on merits, I would respectfully agree with the conclusion reached by this Tribunal. I do not find any glaring omission or patent mistake or grave error that had crept into the record. The arguments canvassed do not convince me that there is any error or mistake that had crept into the order. The RA is dismissed.

N. Sahu
[N. Sahu]
Member (A)
21.2.97,

aa.