

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Review Application Nos.05/2020
in OA No.48/2018

Dated the 26th day of February, 2021

CORAM :

Hon'ble Shri Jayesh V Bhairavia, Member (Judicial)
Hon'ble Shri Dr A.K.Dubey, Member (Administrative)

Bhursingh Manji,
Son of Mr Manji Urtan,
Age about 47 years,
Nr. Katchachut Via. Dandi Road,
Nr. Saket Ashram Village Ankleshwar,
Post-Ambetha, Surat – 399 651. ... Applicant

By Advocate P H Pathak

V/s

- 1 Union of India (Notice to be served
Through the General Manager,
Western Railway, Churchgate,
Mumbai – 400 020.
- 2 Sr. D.E.N. (S) W.Rly,
Divisional Office,
Batanagar, Vadodara – 390 004.
- 3 Asst. E.N. (S) South,
W.Rly, Near Railway Station,
Bharuch – 394 001. ... Respondents

ORDER (BY CIRCULATION)

Per Hon'ble Shri J V Bhairavia, Member(J)

- 1 The present review application No.05/2020 is filed by the original applicant seeking recall/review of order dated 30/09/2020 passed in OA No.48/2018 (Annexure A/1). It is noticed that aggrieved and dissatisfied by the speaking order dated 16.02.2016 passed by appellate authority had approached this Tribunal by filing OA No.48/2018 and had sought the following reliefs:

8 “(A) *The Hon'ble Tribunal be pleased to declare the impugned order of the Appellate Authority rejecting the appeal of the applicant as unjust, arbitrary, illegal and violative of Art.14 and 16 of the Constitution of India and be pleased to set aside the same.*

(B) The Hon'ble Tribunal be pleased to declare that the Disciplinary and Appellate authorities have travelled beyond the scope of the charges and therefore, be pleased to quash and set aside the order of imposing of the penalty and the order passed by the Appellate Authority and direct the respondents to reinstate the applicant in service with all consequential benefits further direct to pay arrears of salary to the applicant with 18% interest.

(C) Be pleased to direct respondents to recover the amount of interest, special cost and compensation from the erring officer.”

- 2 This Tribunal after going through the factual matrix of the case and the contentions raised by parties it was found that the charges levelled against the applicant have been proved and considering the gravity of misconduct of the applicant delinquent awarded the punishment. Both the disciplinary authority and appellate authority had recorded their findings with cogent reasons and hence we did not find any merit to interfere with the findings recorded.
- 3 Aggrieved by the said order dated 30/09/2020, the review applicant has filed the present RA on the ground that the applicant in the OA contended that (i) he was issued charge sheet on 29.01.1999 without mentioning the list of documents and name of witnesses, relying on which the charge sheet was framed is lost sight of because of delay in deciding the case, (ii) that as per The Railway Servant Discipline and Appeal Rules, the statement of witnesses and the documents should be supplied with the charge sheet. The documents were not supplied to the applicant till the enquiry proceedings started and hence principles of natural justice was not followed and the said issue was also lost sight of by the Tribunal, (C) the charge sheet levelled against the applicant is very vague and without any foundation. Rule 9 of The Railway Servant Discipline and Appeal Rules was not taken note of by the Tribunal, etc. Hence, the applicant has filed this Review Application.

4 On the basis of aforesaid pleadings and grounds in the RA, the applicant has sought following reliefs:

"6(A) The Hon'ble Tribunal be pleased to recall/review final order in OA 48/2018 at Annexure A/1 to this application and grant all the relief prayed for in OA 29/2015 in light of the binding decision of Higher Court.

(B) Any other relief which the Hon'ble Tribunal deems fit and proper in the interest of justice may be granted together with cost."

5 On perusal of the review application it is noted that the applicant has tried to re-argue his case by reiterating the facts of OA. It is noticed that this Tribunal in its order dated 30.09.2020 has observed as follows:-

"9. The present Original Application is the fourth round of litigation instituted by the applicant for the same cause. The detailed discussion of the earlier round of litigations is made hereinabove. At this stage, it is also apt to refer the directions contained in para-19 of OA No. 25 of 2012, which read as under:-

"We direct the respondents to punctiliously obey the above directions and to pass appropriate order on Annexure A/2 appeal within two months from the date of receipt of copy of this order, failing which respondent No.1 General Manager himself shall appear before this Tribunal and shall explain why the aforesaid directions have not been complied with...."

10. We have carefully gone through the impugned speaking order dated 16.2.2016/17.2.2016 (Annexure A) which has been passed by the AA pursuant to the directions dated 11.12.2015 passed in OA No. 25 of 2012 by this Tribunal.

11. A perusal of the impugned order clearly reveals that though ample opportunities for personal hearing were given to the applicant/delinquent by the Appellate Authority, he chose not to appear. The documents mentioned in the charge sheet had been supplied to the applicant vide letter dated 29.3.2005. The Enquiry Officer had allowed the applicant delinquent to take assistance of DC and accordingly, he took the assistance of Shri J V Fitter – Office Supdt, (Traffic Store) to defend his case. It is also stated by the AA that charges were proved with the assistance of statement made by Shri Babu Bhika Khera Jokhna & Bhika Amtha, that the applicant was throwing stones and beating the Jamadar with beater. Further, while dealing with contention of the applicant CO that he was not given a chance to cross examine Shri O.P.Bhardwaj, in this regard the AA recorded its finding that the said grievance of the applicant is not correct. This is an after thought as the CO has himself certified that, he is satisfied with the proceedings. It is (CAT/AHMEDABAD BENCH/OA No.48/2018) 13 further stated by the AA that the facts included in the letter of Shri O P Bharadwaj, the same was supported by the statements of the witnesses recorded during the departmental inquiry process.

12. *It is further noticed that in para 12 of the impugned order, the AA has recorded its findings and reasons to uphold the penalty and its proportionality, to record as under,*

“.....The post of Gangmen in the Railway Department are of very important and they are required to work in the track under the supervision of their supervisors. Such action of throwing stones and beating the supervisor by beater as per the charges levelled against CO, is unwarranted and will lead to indiscipline on the part of the CO. Such incidents could have lead to affect safe running of trains having thousands of passengers. At the time of incident, the Gang was doing a very important work of lifting and surfacing of track. This is a very important work to maintain safety of running trains. Any lacunae in this work can lead to derailment of trains. Hence, the penalty imposed by the DA is proportionate to the charges levelled against the delinquent employee.”

13. *The above discussion and reproduction of facts hereinabove, makes it abundantly clear as day light that while passing the impugned order as per the provision of Rule 22 (2) of Railway Servants D&A Rules 1968, the Appellate Authority has duly complied with the directions contained in para 18 (i) to (vii) of the Order dtd. 11.12.2015 issued by this Tribunal in OA No. 25 of 2012. It is noticed that the AA has assigned sufficient and cogent reasons for arriving at the conclusion reflected in the impugned order, including the point of proportionality of the penalty. It is apt to mention that the power of the Tribunals in reviewing the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority, are very limited and such powers are exercised only in such cases where flagrant violation of rules and breach of principles of natural justice is established.*

14. *A bare perusal of the speaking order which is impugned herein, it reveals that due opportunity was granted to the applicant to defend his case during the inquiry. After considering the majority of points raised in appeal, the AA has recorded its finding by cogent reasons for its approval to the decision of disciplinary authority for awarding major punishment to the applicant. Therefore, the submission of the applicant that Appellate Authority had not considered the points raised by the applicant and passed the order in mechanical manner. It is also not correct to state on behalf of the applicant that there was no evidence surfaced during the enquiry against the applicant. As noticed herein above, the AA has assigned detailed reason for its finding and 15 conclusion. The Hon'ble Apex Court in the case of State of Bihar vs. Phulpuri Kumari reported in [2020 (2) SCC 130], has held that*

“it is settled law that interference with the orders passed pursuant to a departmental enquiry can be only in case of “no evidence”. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the Criminal Court were the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.”

15. *In addition to the above discussion, even the settled proposition of law on the subject does not favour the case of the applicant. The Hon'ble Apex Court in the case of State of Karnataka vs N.Gangaraj reported in [(2020) 3 SCC 423], after referring to the earlier decisions of the Hon'ble Supreme Court, viz. State of A.P. & Ors. Vs. Sree Rama Rao [AIR 1963 SC 1723], B.C.Chaturvedi vs. UOI & Ors. reported in [(1995) 6 SCC 749], High Court*

of Judicature at Bombay through its Registrar vs. Sashikant S. Patil & Anr. [(2000)1 SCC 416], UOI vs. P. Gunasekaran [(2015) 2 SCC 610] & others, re-iterated the scope of judicial review of the decision of disciplinary authority and held that “the Disciplinary Authority aggrieved with the findings of the Enquiry Officer and had passed an order of punishment. An appeal before the State (CAT/AHMEDABAD BENCH/OA No.48/2018) 16 Government was also dismissed. Once the evidence has been accepted by the Departmental Authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of the facts recorded by re-appreciating evidence as if the courts are the Appellate Authority.”

16. *In the present case, as noted hereinabove, the disciplinary authority and the appellate authority recorded its finding that charges levelled against the applicant have been proved and considering the gravity of misconduct of the applicant delinquent awarded the punishment. Once both the authorities had recorded their findings with cogent reasons, we do not find any merit to interfere with the findings recorded by the Appellate Authority. We are in respectful agreement with the proposition of law laid down by the Hon’ble Apex Court in the judgments, which are relied upon by the counsel for the applicant here. However, in the facts and peculiar circumstances of the present case, same are not helpful to the applicant.”*

In view of above it cannot be said that the submission of Applicant and cases relied on has not been taken note of.

6 The scope for a review application is clearly defined in various orders of the Hon’ble Supreme Court. The Hon’ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon’ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon’ble Supreme Court culled out the principles which 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.”*

7 The Hon'ble Supreme Court in an another judgment in the case of Union of India v/s Tarit Ranjan Das 2004 SCC (L&S) 160 while dealing with the order passed in Review Application at paragraph 13 observed as under:

“The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reason contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with review petition as if it was hearing original application. This aspect has also not been noticed by the High Court.”

8 Bearing in mind the above principles laid down by the Hon'ble Supreme Court, existence of an error on the face of the record is *sine qua non* for review of an order. It is not permissible for the forum to here in the review application to act as an Appellate Authority in respect of the original order by a fresh re-hearing of the matter to facilitate a change of opinion on merits. We have examined the grounds urged by the review applicant in support of his prayer for reviewing the order and we find that the review applicant has failed to bring out any

apparent error on the face of order under review. So far as grievance of the applicant that this Tribunal has not considered the contention of the applicant, the judgments, rules quoted and infact the petitioner has reiterated the averments in the OA.

9 Thus, in view of above discussion and in light of the law laid down by Hon'ble Apex Court (supra), the applicant has failed to point out any error much less an error apparent on the face of record justifying the exercise of power under sub-clause (f) of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985. The review application deserves to be dismissed and accordingly, the same is dismissed.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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