

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-13/2005 in
OA-457/2004**

New Delhi this the 3rd day of September, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Sh. Mukesh,
S/o Sh. Parmanand,
Warder,
Central Jail No.1,
Tihar, New Delhi.

.... Review Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. Govt. of NCTD through
Secretary Home (General)
Department,
5, Sham Nath Marg,
New Delhi.

2. Director General (Prisons)
Prisons Headquarters,
Central jail,
Tihar, New Delhi.

.... Respondents

(through Sh. Vijay Pandita, Advocate)

Order (Oral)

Heard the learned counsel for the parties.

2. In **Shankar K. Mandal and Ors. Vs. State of Bihar & Ors.** (2003(2)SC SLJ 35) while defining the scope of review, it is held by the Apex Court that if the happenings in the Court have been wrongly recorded, the party concerned has to call the attention of the very Judges who have made the record. Proper course is to file application for review or clarification. No party or counsel thereafter can make a grievance that the grounds argued were not considered.

3. It is also trite law that a review is maintainable only on two grounds (i) if an error is apparent on the face of the record; (ii) discovery of new and important material which after due diligence was not available with the party. Another concept of fairness as brought within the definition is any other sufficient reason to propagate justice and to prevent its miscarriage and also to prevent abuse of the process of review.

4. In the above backdrop, the applicant has challenged by virtue of the present review application an order passed by the Single Bench of the Tribunal in OA-457/2004 dated 19.11.2004 whereby the claim of the applicant to treat the period on duty from 12.3.1997 to 14.9.2000 when he had been kept off duty on termination and till his reinstatement to treat the aforesaid as spent on duty for all purposes has been assailed. Learned counsel of the applicant has taken a plea in the OA that FR 54 envisages issue of a show cause notice and accord of an opportunity when the respondents have not decided the period as spent on duty. In the above backdrop, what has been pointed out is that there is an error as FR 54(b) has not been reproduced fully, which deals with the issue

5. On the other hand, respondents' counsel states that if the ground is taken and is not considered cannot be held to be a sufficient ground to call for review as error in law is not to be corrected by way of review as if in appeal. A reliance has been placed on a decision of the Apex Court in **Meera Bhanja Vs. Nirmala Kumari Choudhury** (1995(1)SCC 170) to substantiate the plea.

6. On careful consideration of the rival contentions of the parties, at the outset, the claim of the applicant is misconceived, as in case of a termination when a person is taken back by the Court, FR 54(A) has

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application and if the technical exoneration is in violation of Article 311 of the Constitution of India, the period has to be decided after accord of a show cause notice and respondents to consider the same. However, if the termination is not as a result of infraction of Article 311 ibid and the order exonerates on merits, this entire period has been ordered as period spent on duty. The fact remains the same that FR 54(b) has not been fully made applicable. The Court applied its mind by reiterating the contentions raised by the applicant and if the same has not been dealt with, that would not constitute a ground to review the order. In the above backdrop, finding no merit in the RA, the same is dismissed but without any order as to costs.

S Raju
(Shanker Raju)
Member(J)

/vv/