

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



R A.350/4/2021
OA. 350/831/2020
MA. 350/285/2021
MA. 350/307/2021

Date of Order : 06.07.2021

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

S. E. RAILWAY
VS.
MANORANJAN NIKAP

For the Review Applicants : Mr. K. Sarkar, counsel

For the respondents(In RA) : Mr. A. Chakraborty, Counsel
Mr. S.K. Dutta, Counsel

ORDER
(DISPOSED OF BY CIRCULATION)

Bidisha Banerjee, Judicial Member

This RA has been filed on 21.06.2021 by the respondents seeking review of the order dated 12.04.2021 passed in O.A No.831/2020, OA. 832/2020, OA. 833/2020, OA. 891/2020 and OA. 892/2020.

2. The operative part of the order dated 12.04.2021 passed in O.A No.831/2020 along with 4 other OAs, reads as under:-

"7. In such view of the matter, the orders impugned in OA. No. 350/831/2020 and all other OAs are quashed. The respondent authorities are however given liberty to act strictly in accordance with law.

8. Accordingly, the O.As are disposed of. No costs."

3. The respondents in OA have stated as under:

"13. It is humbly submitted before this Hon'ble CAT, Kolkata Bench in fact i.e. Page- 8 had said as follows:

"We are surprised to note that Sri Manoranjan Nikap, i.e. the applicant in OA. No. 350/831/2020 who stands removed from railway service has been directed to attend a preliminary enquiry on 28.12.2020 by an inquiry officer being the Divisional Electrical Engineer, TRS namely, Sri A. K. Gupta in his chamber, which course of action is neither supported by any rule or law nor by any authority. Further, an order dated 19.01.2020 addressed to Manoranjan Nikap says that "Preliminary enquiry to be held on 28.12.2020 in connection with above Punishment Notice" which "punishment notice" is in fact an order of removal from service dated 03.11.2018 and can be issued only after withdrawal of the removal order by the competent authority. We are even more surprised to note that by a memo dated 24.04.19 the applicant, a removed employee, where master servant relationship has served a Chargesheet.

14. Here the Hon'ble CAT/Kolkata Bench has erroneously not mentioned the Rule 18 of RS (D&A) Rules, 1968 and its Explanatory Note has given a provision that even after removal of an employee, enquiry can be conducted for a ceased employee and for that reinstatement is not mandatory.

Therefore, the Hon'ble CAT/Kolkata Bench has erroneously mentioned that "no Rule or authority has been cited to support such course of action" but actually in the reply to the Original Application the rule has been categorically mentioned and it has been further erroneously mentioned that similar illegal orders had been issued in other matters too which is not correct and legal in view of the Rule 18 of RS (D&A) Rules, 1968."

4. The Ld. Counsel for the applicant has objected that the grounds put forth by way of this application are not tenable grounds for review.

5. 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

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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."

6. 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.

7. 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].

8. The Hon'ble Apex Court on numerous occasions had deliberated upon the very same issues 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 **Aribam Tuleswar Sharma v Aribam Pishak 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)

9. 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)

10. 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 debito justitiae*. 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."

11. 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.

12. We have heard learned counsel for the parties.


13. We note that Rule 18 of the RS (D&A) Rules applies to a situation where an appealable order has been issued by the authority. The said rule allows appeal to be preferred against the orders issued by the authorities and mentions that such appeal is maintainable even by the Railway servant, who has ceased to be in Railway Service whereas in the present case, the stages of appeal are already over. An enquiry has been directed against a removed railway servant which is not permissible in terms of Rule 18 of RS (D&A) Rules, 1968.

14. In view of the decisions quoted above, and, due to the reasons as aforesaid, we find that the Review Application is not maintainable, and, therefore, we reject the same.

15. Thus, the RA is dismissed. No costs.


(Tarun Shridhar)

Administrative Member


(Bidisha Banerjee)

Judicial Member

SP/PD