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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

R.A. No.38 of 1997 -
(O.A. No.270 of 1996)

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

UNION OF INDIA & ORS.(E.RLY.)

...Petitioners/respondts.

VS

ASHOKE SENGUPTA & ORS.

... Opposite Parties

For the Applicants : Mr. P. K. Arora, counsel

For the Respondents/OP: Mr. S. Ganguly, counsel
Mr. S. Bhattacharya, counsel

Heard on 26.4.1999

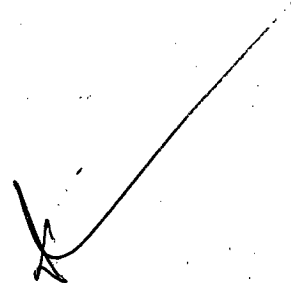
: : Date of order: 07.6.99

O R D E R

This review application has been taken up for hearing. It is found that the present application for review has been filed by the Railway Respondents for reviewing the order dated 15.5.97 passed by this Tribunal allowing the prayer of the applicants in OA 270/96. It is also found that the said applicants preferred a writ application under Art.226 of the Constitution before the Hon'ble High Court at Calcutta against the order dated 15.15.97 and that has been numbered as WPCT 236/97 and the Hon'ble High Court stating, interalia passed the following order on 1.3.99 in the said writ application :

"we are of the view that the hearing of this writ petition shall remain stayed till the disposal of the review application filed by the Railway authorities. Accordingly, we stay the hearing of this writ application for a period of six weeks from date and direct the Tribunal to dispose of the review application within a period of four weeks from date positively without granting any adjournment on any ground whatsoever.

We make it clear that all questions regarding review of the order which is under challenge in this writ application are kept open to be decided by the Tribunal at the time of disposal of the review application."

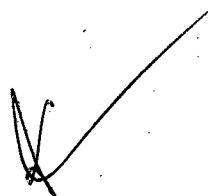


2. On the basis of the order passed by the Hon'ble High Court on 1.3.99 in the said writ petition, the matter was taken up for hearing. The grounds stated in the review application by the Railway respondents are as follows:

It is stated in the review application that the petitioners' counsel enclosed a copy of the judgment dated 10.3.95 delivered in an analogous case being OA No.1403/92 of C.A.T., Madras Bench to establish that the claim of similar circumstanced persons, who were the petitioners in O.A. No.1403/92 had been dismissed by the Division Bench and it would appear from the said judgment dated 10.3.95 passed in the said case being OA No.1403/92 that while dismissing OA No.1403/92 the the Tribunal had also taken into consideration the judgment passed in OA No.1013/90 in detail on which the applicants of the instant case i.e., OA 270/96 intended to rely upon and came to conclusion that the petitioners in OA No.1403/92 were not covered with the judgment of OA No.1013/90 and were accordingly not entitled to the reliefs as claimed. And thereby the judgment is required to be reviewed by this Tribunal.

3. Mr. Arora learned advocate appearing on behalf of the present petitioners submits that the judgment of the Madras bench as relied upon by him contains two OAs bearing No.1402/92 and 1403/92 and in para 16 of the said judgment it was concluded that OA No.1403/92 is dismissed and the order dated 31.10.91 in OA 1402/92 is hereby set aside. Further it was directed that the respondents are to give four additional increments to the applicant in OA 1402/92, as envisaged by the Railway Board vide its letter dated 29.5.1989 with all arrears of pay and allowances. Mr. Arora further submits that the Tribunal in para 10 of the judgment dated 15.5.97 has stated that "I do not find any reason to differ with the judgment of the C.A.T., Madras Bench, in view of the discussion made above." And the Hon'ble Tribunal did not specify which of the two judgments mentioned in


Mr Arora Submit that



para 16 of the judgment of the Madras Bench as produced by the respondents has been relied by the Tribunal at the time of passing of the judgment. And there has been patent error apparent on the face of the judgment and thereby the judgment is required to be reviewed.

4. Mr. S. Ganguly, learned advocate on behalf of the original applicants/respondents of this review application submits that a review is by no means an appeal in disguise and there is no patent error apparent on the face of the record. So, the question of reviewing the earlier judgment does not arise as it does not fall within the purview of review under Order 47, Rule 1 of the Civil Procedure Code. Mr. Ganguly also submits that the judgment might be erroneous, but erroneous judgment cannot be reviewed unless it is shown that it is an error apparent on the face of the record and he further submits that the judgment does not give any scope for confusion, as claimed by the Railway respondents/applicants of this review application. There is an elaborate discussion in the judgment. So, the question of review did not arise in this case. Thereby the application is liable to be dismissed. Mr. Ganguly further relies on the judgment reported in AIR 1995 SC 455 (Smt. Meera Bhanja vs. Smt. Nirmala Kumari Chaudhury) and another judgment of the Hon'ble Apex Court, reported in 1995 Supp(2) SCC 654 (Md. Ashraf Ali vs Debraj Wadhera). He further submits that on the basis of the aforesaid two judgments review application is to be dismissed.

5. I have considered the submissions of the learned advocates of both the parties. The disputes arose for the purpose of adjudication before me in the original OA 270/96 for non-granting of another four advance increments in addition to two advance increments already given to the applicants, as per Railway Board's letter No.E(NG)I/87/IC2/1 dated 29.5.89, letter No.E.(TRG/89(28)/29 dated 12.10.1990 and the Railway Board's letter No.E(TRG)/89(28/29) dated 4.5.1990 to the 29 applicants



who had just acquired higher technical qualification as BE or equivalent to B.E. like Grade-I.E.T.E., A.M.I.E. before 1989, and holding technical non-gazetted posts under Group-C in different places under respondent No.2. It is found from the judgment dated 15.5.97 of this Bench that the judgment of Madras Bench has been considered and specifically held that, "I do not find any reason to differ with the judgment of the C.A.T., Madras Bench, in view of the discussions made above." It is found from the judgment of the Madras Bench that the subject matter of the case bearing OA No.1403/92 is quite different from the subject matter of the OA No.1402/92. In OA 1403/92, the applicant is working as a Carriage and Wagon Inspector, which is a group 'C' post and the applicant acquired the AMIE qualification by passing Sec. A in 1980 and Sec. B in 1984. And on the basis of the Fourth Pay Commission's recommendations, this applicant has also claimed similar relief as that of the applicant in OA No.1402/92 and by clubbing the judgment OA 1403/92 was dismissed and OA 1402/92 was allowed. It is also found that the present applicants in OA 270/96 fall within the category of the judgment in OA 1402/92 and it was further clear that before 29.5.89 the scheme of incentive was available to the Group 'C' staff acquiring higher qualification and they were given two advance increments for passing part-II and cash incentive of Rs.200/- was granted for passing part-I. So, admittedly, on the basis of the recommendation of the Fourth Pay Commission, by the circular or letter dated 29.5.1989, the scheme contained in the letter dated 14.5.1966 was amended by adding that (i) for passing Part-I or A or Intermediate or Pre-Final Examination, the employees would be entitled to 2 (two) advance increments and (ii) For passing Part-II or 'B' or Final Examination, four advance increments. So, the question comes what is the effect of that substitution brought in by way of amendment of the circular dated 14.5.1966 by the letter dated 29.5.1989 (Annexure/D to the original

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application). So, on the face of the discussion made in the judgment itself it cannot be said that there should be any confusion in the minds of the respondents for mentioning that "I do not find any reason to differ with the judgment of the Madras Bench."

6. In the case of Smt. Meera Bhanja vs. Smt. Nirmala Kumari Chowdhury, reported in AIR 1995 SC 455, the Hon'ble Supreme Court had considered the limits of exercising the power of review under Order 47, Rule 1 of the C.P.C. and it is opined by the Hon'ble Apex Court that for the purpose of review the error apparent on the face of the record must be there which 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. And it is now well settled by the several judgments of the Hon'ble Apex Court that the review proceeding is not by way of appeal and it is strictly confined to the scope and ambit of Order 47, Rule 1 of the C.P.C. After perusal of the said judgment of the Hon'ble Apex Court I find that in the instant case also there is no error apparent on the face of the record. The judgment may be erroneous, but it may not be the ground for review of the same.

7. In view of the aforesaid circumstances I do not find any merit in the application for review and hence it is liable to be dismissed. Accordingly the review application is dismissed awarding no cost.

11/02/99
(D. Purkayastha)

MEMBER (J)