

Central Administrative Tribunal Lucknow Bench Lucknow.

**Review Application No. 44/2009
In
Original Application No. 35/2005**

This, the 26th day of October, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Om Prakash Gupta, aged about 76 years son of Late Sri R. B. Gupta
R/o 5/826, Viram Khand, Gomti Nagar, Lucknow.

Applicant
By Advocate Sri M.A. Siddiqui.

Versus

1. Union of India through G.M.N.E. Railway Gorakhpur.
2. G.M.N.E. Railway, Gorakhpur.
3. Dy. C.P.O. (Gazetted) N.E. R. Gorakhpur.

Respondents

Order(Under Circulation)

By Hon'ble Dr. A.K. Mishra, Member (A)

This is a review application against the order dated 10th September 2009 passed by this Tribunal in O.A. No. 35/2005.

2. The applicant submits that there was a manifest error of law on the part of this Tribunal in holding that the Inquiry Officer was senior to the applicant whereas, both of them had the same pay scale and further by holding that there was no infirmity in the disciplinary proceedings in terms of the provisions of Rule 9(2) of the Railway (Discipline & Appeal) Rules 1968. He further contends that there was an error in appreciation of the fact that the applicant's request for adjournment on the ground of his illness was not granted by the Inquiry Officer, and that the findings of the Inquiry Officer was for violation of Rule 3 (1) (ii) & (iii) though the charge was about violation of Rule 3 (1) (i) and (iii) of the conduct Rules 1966.

3. We find that no new ground has been taken by the applicant in this review application. All the grounds taken by him at the time of hearing have been adequately dealt with in our judgment and order dated 10th September 2009. As regards the last ground, we find it is a case of typographical error and no reliance on it was placed at the time of hearing. In any case it relates to the inquiry report and does not alter the substantive allegations constituting the charge.

4. It is settled law that the review forum cannot be treated as an appellate one. This Tribunal cannot sit in judgment over its own order. The Supreme Court has clarified the legal proposition "error apparent on the face of record" in the case of ***State of West Bengal and Others Vs. Kamal Sengupta and another reported at (2008) 8 SCC 612***. The relevant portion of this judgment is extracted below:

"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. Mere

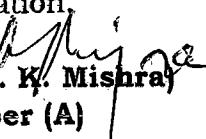


discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. The party seeking review has also to show that such additional matter or evidence was not within the knowledge and even after exercising of due diligence, the same could not be produced before court earlier.

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 direction 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. While exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

5. In view of the settled position of law, we do not find any merit in this review application. If the applicant is aggrieved with the order of the Tribunal, he may seek redress at appropriate judicial forum.

6. In the result, this Review Application is dismissed under circulation


(Dr. A. K. Mishra)
Member (A)


(Ms. Sadhna Srivastava)
Member (J)

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*ok
Copyist order
dated 26.10.2009
Revised
3.11.2009*