

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 46/2009 in

O.A. No. 367/2007

This the ¹⁸16 day of April, 2013

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri D.C.Lakha, Member (A)

Pramod Kumar Pandey aged about 46 years son of late Sri Shree Niwas Pandey, resident of village Ramwapur Govinda, Post Office Pipra Bazar, District-Gonda (lastly working as Mobile Booking Clerk, North Eastern Railway, Gonda).

Reviewist

By Advocate: Sri R.C. Singh

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Additional Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
3. Senior Divisional Commercial Manager, North Eastern Railway, Lucknow Division, Lucknow.
4. Divisional Commercial Manager, North Eastern Railway, Lucknow Division, Lucknow.

Respondents

By Advocate : Sri Deepak Shukla for Sri D.B. Singh

(Reserved on 2.4.2013)

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This application has been moved for review of judgment and order dated 18.9.2009 passed in O.A. No. 367/2007 by Hon'ble Ms.Sadhna Srivastava, Member (J) and Hon'ble Dr. A.K.Mishra, Member (A) (both retired) u/s 22(3)(f) of AT Act, 1985 read with Rule 17 of CAT (Procedure) Rules, 1987.

2. We have heard the learned counsel for the parties at length and perused the material on record.
3. At the time of arguments, learned counsel for applicant confined his arguments only on the following points:-

"That the applicant has come to know on 20.9.2009 that one Sri Subodh Kumar Verma had made an application under the Right to Information Act, 2005 and requested for providing the list of

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Part Time Mobile Booking Clerks who had worked till or prior to 17.11.1986 and in reply thereto the Divisional Commercial Manager, North Eastern Railway, Lucknow vide his letter No.C/387/PIO/08/5 dated 25.4.2008 had forwarded a list of 85 Mobile Booking Clerks who had worked at various stations during the aforementioned period. The name of the applicant is at Sl.No. 84 of the list and it is mentioned that the applicant had worked for 161 days. The reply given vide letter dated 25.4.2009 and the list enclosed makes it abundantly clear that charges framed against the applicant were false and fabricated.

That it is specifically stated that the copy of the letter dated 25.4.2008 along with the list of 85 part time Mobile Booking Clerks could not come to the knowledge of the applicant despite due diligence and as such the same is being filed along with the present review petition on its discovery.

That the review petition on the ground of discovery of new material is fully covered within the scope of Order XLVII Rule 1 of the Code of Civil Procedure, 1908."

4. We are therefore, not adverting to other points mentioned in the review application.

5. This review application is supported by an uncontroverted affidavit enclosing therewith certain documents including a list of 85 Mobile Booking Clerks which has been furnished on 25.4.2008 by none other than the Respondents Railways themselves in response to two applications dated 10.1.2008 and 23.2.2008 moved under Right to Information Act. In this list, the name of the applicant also finds place at Sl. No. 84 showing 161 working days. This list is said to be the most significant and relevant document for adjudicating the point in question.

6. Besides, a Supplementary Affidavit has also been filed in support of the review application again enclosing therewith certain documents including copy of an important and significant judgment dated 6.8.2010

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passed by Hon'ble Delhi High Court, upholding the four orders passed by CAT, Principal Bench in favour of four similarly situated Mobile Booking Clerks and dismissing the Writ Petitions 307/2009, 11275/2009, 11636/2009 and 11653/2009 filed by the Railways. A copy of order dated 28.12.2010 has also been annexed as Annexure S-3), by means of which all the above four Mobile Booking Clerks have been reinstated in service by DRM, NER, Lucknow in furtherance of the aforesaid judgment of the Hon'ble Delhi High Court. Another copy of order dated 5.2011 has been annexed as Annexure S-4, by means of which all the four Mobile Booking Clerks have been posted to various stations. Since, the arguments have been confined only to the above points, other documents are not being referred here to save time.

7. From the other side, merely an objection has been filed with the request to dismiss the review application.

8. From the side of the applicant, a compilation of following case laws has also been filed:-

1. **AIR 1979 SC 1047 Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and others-** It says that writ under Article 226 cannot be a ground for review especially when two documents were not even relied upon by the parties in the affidavits filed in the writ.
2. **AIR 1997 SC 2693 Surjit Singh and others Vs. Union of India and others-** In this case after considering Section 151 of CPC and Section 19 of the AT Act, 1985, it was laid down that Tribunal is duty bound to correct its mistake of law by way of review if patent error is brought to the notice of the Tribunal.
3. **AIR 2003 SC 209 Rajendra Kumar and others Vs. Ramabhai and others-** In this case also order 47 Rule 1 of CPC was discussed.
4. **AIR 2004 SC 1738 M/s Green View Tea and another Vs. Collector, Golaghat Assam and another-** "do".

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9. In the above compilation, a copy of subsequent order / judgment of this Tribunal passed in O.A. No. 114/2007 and 389/2007 filed by similarly situated Mobile Booking Clerks namely Ashok Kumar Verma and Ajit Kumar Srivastava decided on 18.4.2012 in favour of the applicants has also been filed.

10. From the side of the respondents, following two case laws have been relied upon:-

1. Appeal (Civil) 1041-1044 of 2004, Gopal Singh Vs. State

Cadre Forest Officers' Association and others- In this case no reason was found to had been given by the Tribunal for reviewing the earlier order and it was found that there was no necessity to review the earlier order. There was also no apparent error on the face of record. Therefore, it was laid down that the Tribunal has travelled out of jurisdiction to write the second order in the name of reviewing its own judgment.

2. Meera Bhanja Vs. Nirmala Kumari Chowdhary 1995 SCC (1)

170- In this case , it was found that under the provisions of review, entire evidence pertaining to the subject matter was reconsidered. The Hon'ble Supreme Court opined that the Division Bench of the Hon'ble High Court has over stepped its jurisdiction.

11. The ratio laid down in the above case laws would be kept in mind while deciding this review petition.

12. The back ground facts wrapped in brevity are that a charge sheet was issued to the applicant in 1993 mainly on the allegation that he had submitted a fake certificate about his working experience as Mobile Booking Clerk for the purpose of his fresh engagement. He was found guilty and removed from service on 22.12.97. Consequent to his filing a departmental appeal, the charge sheet dated 3.12.93 was withdrawn. In its place, a fresh charge sheet was issued on 25.3.98 on the same allegations. He was again found

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guilty and was removed from service on 3.10.2006. Similarly, his departmental appeal and revision were also rejected on 14.2.2007 and 19/20.7.2007 respectively. Hence the applicant filed this O.A. No. 367/2007 which had been dismissed by the then Division Bench on the ground that he could not produce any substantial facts other than the disputed certificate of his service experience as Mobile Booking Clerk. It was also observed that he could have obtained it from Personnel Department under the RTI 2005 and could have produced the same by means of Supplementary Affidavit.

13. Here it is also worthwhile to note that CAT, Principal Bench on the other hand allowed all the aforesaid four OAs in favour of the applicants who were almost similarly situated persons. Those orders of CAT, Principal Bench were challenged before the Hon'ble High Court Delhi, which has dismissed all the writ petitions by means of aforesaid common judgment dated 6.8.2010. The only worthwhile submission which was made on behalf of the Railways before the Hon'ble High Court as mentioned in Hon'ble High Court's judgment was, that it was for the respondents to prove that the certificates submitted by them (Mobile Booking Clerks) were not forged and fabricated documents. The Hon'ble High Court did not accept this submission and said that the onus has to be on the petitioner (Railways). During the pendency of those writ petitions, one significant event also took place that a list of 85 persons was successfully brought on record of the Hon'ble High Court from the record of the Railways, authenticity whereof was not disputed by the Railways as mentioned in para 20 of the judgment. This list contains the name of 85 persons including the respondents of those writ petitions who had worked as Mobile Booking Clerks. After considering this list, the Hon'ble High Court not only dismissed all the writ petitions but also observed that it would be a futile exercise to conduct any enquiry afresh without producing documents mentioned in the judgment. Hon'ble High Court therefore, observed that if those

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documents are available then only Railways were advised to hold an enquiry, failing which the competent authority may consider the desirability of closing the matter as it is.

14. It is a matter of record that in furtherance of the aforesaid judgment of the Delhi High Court vide an order dated 28.12.2010 (Annexure S-3 to Supple. Affidavit), all the four mobile Booking Clerks have been reinstated in service by DRM, NER, Lucknow and they have also been given posting orders to various stations vide Annexure S-4. These documents have not been rebutted from the other side.

15. Now, we come to the point in question before us. It is noteworthy that the order/judgment in question was rendered by this Tribunal on 18.9.2009 i.e. prior to the above judgment of the Delhi High Court which came on 6.8.2010. Similarly, the latest order/ judgment of this Tribunal in favour of the two more similarly situated applicants in O.A. No. 114/2007 and 383/2007 has also been given on 18.4.2012 i.e. after considering the aforesaid judgment of Delhi High Court. It is worthwhile to mention that the present review petition is mainly based on the same (unchallenged) list of 85 Mobile Booking Clerks which is said to have come to the notice of the present applicant on 20.9.2009 as specifically mentioned in para 20 of the review application and para 21 of the uncontroverted affidavit of the applicant. As shown in the verification clause, para 21 of the affidavit, it has been sworn to be true to the personal knowledge of the applicant. This paragraph has not been specifically controverted by the respondents by any counter affidavit. Only a general objection has been filed by them. Therefore, we do not have any reason to disbelieve the above averment. Thus, we find that indeed this document along with aforementioned documents are new which comprise important material which even after exercise of due diligence was not available with the applicant during the course of adjudication of the O.A. leading to the order dated 18.9.2009 (under review).

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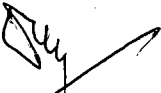
16. The sine-qua-non for judicial review is < the discovery of new and important material or evidence which, even after the exercise of due diligence was not within the knowledge or could not be produced by him as provided under Order 47 Rule 1 of the CPC dealing with the review. It is apparent and duly established from the chronological events and the record as mentioned herein before and also on the basis of uncontroverted specific averments made in this regard by the applicant, that the applicant bonafidely considered himself aggrieved from the discovery of aforesaid new and important matter or evidence which even after exercise of due diligence, was not within his knowledge and therefore, could not be produced by him at the time of final order in question. This point is decided accordingly.

17. Now, we come to the effect entailed by such material. The first and foremost matter or evidence in this regard is the aforesaid list of 85 Mobile Booking Clerks which has been authenticated and furnished by none other than the respondents themselves i.e. the Divisional Commercial Manager, NER, Lucknow (R-4) vide his letter dated 25.4.2008 under the Right to Information Act. This list had been brought on record for the first time during the pendency of the above writ petitions before the Hon'ble Delhi High Court which had made a mention about this in para 20 of its judgment. Some of the present respondents were petitioners before Hon'ble Delhi High Court. They did not raise any objection against the authenticity of the list obviously because it was furnished by themselves. The names of four respondents of the above writ petitions found place in the list indicating number of working days also. In other words, those Mobile Booking Clerks had correctly claimed to have worked as Mobile Booking Clerks. Consequently, therefore, the main charges against them in the departmental enquiries in respect of allegedly giving false certificates of working as Mobile Booking Clerks became non-est and baseless. Therefore, their termination orders as well as Appellate and Revisionary orders also became baseless and

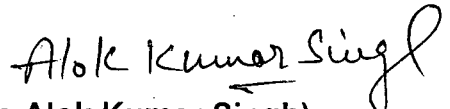
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meaningless. Consequently, the Hon'ble High Court upheld the orders of CAT, Principal Bench and dismissed the writ petitions filed by the respondents. The name of the present applicant also finds place at Sl. No. 84 in the same list of 85 persons and he had also worked for a sumptuous period of 161 days. Being almost similarly placed person, he should not be treated differently, lest it would amount to discrimination and infringement of Article 14 of the Constitution of India. On the basis of the aforesaid document, the charge framed against the applicant also becomes nonest and without any basis. Consequently, the whole enquiry as also the punishment order, appellate order and revisionary order having also become baseless and meaningless, the same deserve to be quashed forthwith. For the purpose of opposing this review application, though a formal reply/objection has been filed by the respondents half heartedly but in fact it is not even in accordance with Rule 17 of CAT (Procedure) Rules, 1987 which requires that the Counter Affidavit in Review Application will also be a duly sworn wherever any averment of fact is disputed. But the reply/objection filed by the respondents has not been duly sworn before any Oath Commissioner or notary as has been done by the applicant in respect of their original affidavit and Supple. Affidavit. Apparently, the respondents were not in a position to oppose the authenticity of same list of 85 persons which they themselves have furnished under the RTI and against which no objection was raised by them even before the Delhi High Court, which ultimately decided this matter against the Railways and in favour of the similarly situated Mobile Booking Clerks and that judgment has already attained finality as the respondents have reinstated those 4 persons and have also given them posting. As already mentioned both these orders have also been brought on record and these documents also were neither within the knowledge of the applicant nor could be produced at the time of passing of the final order by this Tribunal in this O.A.

18. Consequently, therefore, in view of the aforesaid new important matter/ evidence, the Review Application deserves to be and is partly allowed. Accordingly the order/ judgment passed on 18.9.2009 is hereby reviewed. The O.A. is partly allowed in view of the above discussion. Consequently, the impugned order dated 3.10.2006, removing the applicant from service and also the impugned orders dated 14.2.2007 and 20.7.2007 passed by the Appellate Authority and Revisionary Authority are quashed. No order as to costs



(D.C. Lakha)
Member (A)



(Justice Alok Kumar Singh)
Member (J)

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