

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 12/2012.

in

OA No. 181 of 2005

27th November
This the day of ~~August~~, 2012

Hon'ble Sri S.P. Singh, Member (A)

Hon'ble Sri Navneet Kumar, Member (J)

Zulfiqar Ahmad, aged about 56 years, S/o Sri Absar Ahmad, R/o
H.No. 426/779, Wazirbagh, Lucknow.

Applicant

By Advocate: Sri R. Sharma

Versus

1. Union of India through the General Manager (Personnel),
North Eastern Railway, Gorakhpur.
2. The Chief Administrative Officer (Construction) North-
Eastern Railway, Gorakhpur.
3. The Chief Signal & Telecom Engineer (Const.) North-
Eastern Railway, Gorakhpur.
4. The Dy. Chief Signal and Telecom Engineer (Const.)
North-Eastern Railway, Lucknow.
5. The District Signal and Telecom Engineer (Const.)
North-Eastern Railway, Lucknow.

Opposite Parties

By Advocate : Mr. S. Verma

(Under circulation)

ORDER

BY HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)

The present review application has been preferred by the applicant for
reviewing the order dated 1st August, 2012 by means of which original

application no. 181/2005 was decided whereby it was observed by the Tribunal as under:-

"8. Considering the facts of the case and also the observations of the Hon'ble Apex Court, since the applicant failed to indicate any seniority list as well as order of promotion of any junior to the applicant as well as he was declared unsuccessful in the viva voce which was held in the year 1983, cannot claim for correction of fixation of his pay w.e.f. 1983 as such, we are not inclined to interfere in the present O.A. As such the present OA is liable to be dismissed on merit as well as on the ground of limitation. Accordingly, it is dismissed. No order as to costs".

The applicant who was preferred the original application no. 181/05 prayed for setting aside the impugned order dated 29-11/1-12-04 as contained in Annexure No. 1 to the original application and also prayed for issuing the direction on the respondents to fix the pay of the applicant in Group 'C' post with retrospective effect from the year 1983 or at least with effect from 01.01.1995 that is the date when the applicant has duly taken part in the written examination. After filing of the present original application the respondents filed their counter reply and in their counter reply it was mentioned as per rule given in chapter iii of the Indian Railway Establishment Code Vol- I. The similarity shall be taken from the date of their joining. The respondents has also pointed out that the applicant compares himself with Shri Jagvir Singh Verma and Laxmi Narain to qualify the selection of Group 'C' post for junior clerk against 40% reserved quota in the year 1983 itself whereas the applicant has failed therein. The applicant has prayed for stepping up of his pay at par with Shri Jagvir Singh Verma and Laxmi Narain or any other junior with effect from 1983 or from any other subsequent date or promotion from the date of their junior cannot be granted without assailing their relative seniority over two decades which is not only grossly barred by limitation but also a ground of non-joinder of necessary parties.

2. The applicant in response to the counter reply has also filed the rejoinder and through rejoinder the applicant controverted the averment made in the counter reply and has also indicated that the respondents have themselves admitted the grievances of the applicant as to genuine but since the matter is



being subjudice that they have not taken any action and tried to misrepresent the Tribunal. The learned counsel for the applicant through his rejoinder has also pointed out that Shri Jagvir Singh Verma and Laxmi Narain are junior to the applicant were arbitrary and illegally promoted by the respondents who appear in the selection. Apart from this learned counsel for the applicant has pointed out that the respondents has deliberately delayed the selection process for more than 8 or 9 years for which the applicant cannot be held responsible.

3. The learned counsel for the applicant by means of present review application has tried to point out that the Tribunal while deciding the original application fail to consider the seniority list and has also indicated this facts that the eligibility condition for selection to the post of LDC Clerk of Group 'C' post is 3 years continuous service on the Group D post and the applicant is fully eligible for being selected to the post of LDC whereas another person Shri Laxmi Narain and Jagvir Singh Verma were declared selected. The applicant has also pointed out that he has passed the written examination in the year 1983. The applicant has also tried to point out that since the pendency of the appeal gives limitation to the applicant in filing the original application as such the present OA is not barred by limitation.

4. All these facts are mentioned in the original application as well as either in the counter reply or in the rejoinder reply and the Tribunal while deciding the review application has not dismissed the present original application on the ground of limitation whereas it was dismissed that the applicant fail to indicate any reasons for interference apart from this he has been declared unsuccessful in the viva-voce test. It is also to be pointed out that at the time of selection when one Shri Jagvir Singh Verma and Laxmi Narain was allowed to appear in the written examination, the applicant fail to raise any grievance at that point of time as such raising a new issue in the review application is not permissible.

5. By means of review application the applicant tries to reopen the entire issue afresh which is not permissible in the review application.

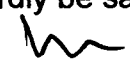
6. The Hon'ble Supreme Court in the matter of **Meera Bhanja v. Nirmala Kumari Choudhury** reported in (1995) 1 SCC 170 has decided the issue and has observed that review proceedings are not by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC. The review petitions has to be entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has observed as under:

"8. It is well settled that the 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, CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of **Aribam Tuleswar Sharma v. Aribam Pishak Sharma**, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3).

"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, there is nothing in Article 226 of the Constitution to preclude the 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 definitive 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-down process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale** wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record;

An error which has to be established by a long-down process of reasoning on points where there may conceivably be two opinions can hardly be said



to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue a writ.”

7. As categorically pointed out that the Court who has decided the matter cannot re-apprise the entire issue afresh. Only the typographical error or the error apparent on record can be rectified in the Review Application. By means of the present Review Application the applicant tried to reopen the entire matter afresh. The Hon'ble Apex Court in the case of **State of West Bengal and Ors. – vs- Kamal Sengupta and Another, 2008 (3) AISLJ 231**, has been pleased to observe as under:-

“5. In the matters concerning review the Tribunal is guided by Rule 47(1) of CPC. Also the decision of the Apex Court in Kamal Sengupta would be applicable in review matter being dealt with by the Tribunal. The parameter of a review application is limited in nature. The Apex Court has laid down the contours of a review application in the **State of West Bengal and Ors. –vs- Kamal Sengupta and Another, 2008 (3) AISLJ 231**. At para 28 the Apex Court has laid down eight factors to be kept in mind which are as follows:

- (1) The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.
- (2) The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.
- (3) “that any other sufficient reasons” in order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (4) 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 the record.
- (5) An erroneous decision cannot be correct under review.
- (6) An order cannot be reviewed on the basis of subsequent decision/ judgement of coordinate/ larger bench or a superior Court.
- (7) The adjudication has to be with regard to material which were available at the time of initial decision subsequent event/ developments are not error apparent.
- (8) Mere discovery of new/ important matter or evidence is not sufficient ground for review. The party also has 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 earlier before the Tribunal.

6. It is clear that the ruling of the Supreme Court in **Kamal Sengupta (supra)** is that the crucial point is error on the face of the record. No such error on the face of the record has been shown by the applicants."

8. Even if the decision of the Tribunal in the OA is erroneous it cannot be corrected in a Review Application nor can a Tribunal write a second order since it can not sit as an appellate authority over its own earlier order. Considering the facts of the case and the law of the land as is laid down by the Hon'ble Apex Court we are of the view that the Review Application lacks merit as such fit to be dismissed.

9. Accordingly, the Review Application is dismissed. No order as to costs.

V.R. Agrawal
Member (J)

pd

S.P. Sin
Member (A)

OK
Copy of order
dated 27-12-12
B. S. Sin
05-12-12