

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

R.A. No. 19 of 2009
[Arising out of O.A. No. 04 of 2006]

Date of order : 31.06.2012

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Urmita Datta (Sen), Member [J]

Shailesh Kumar Srivastava.

1. Niraj Kumar Srivastava, S/o Shri Shailesh Kumar Srivastava, Commercial Clerk, N.E. Railway, Siwan.

.....Applicants.

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India and others through G.M., N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager, N.E. Railway, Varanasi.
3. The A.D.R.M., N.E. Railway, Varanasi.
4. The Sr. D.C.M., N.E. Railway, Varanasi.
5. The D.C.M., N.E. Railway, Varanasi.
6. The Sr. D.P.O., N.E. Railway, Varanasi.

.....Respondents.

By Advocate : Shri R.N. Choudhary

O R D E R

Naresh Gupta, M [A] - This RA has been filed by one Niraj Kumar Srivastava seeking a review of the order of this Tribunal dated 01.10.2008 in OA No. 04 of 2006 on the following grounds.

[1] The applicant had referred to certain Annexures - Annexure A/3 to A/5 and A/7 of the OA to show that there was no involvement of the applicant and cited two decisions: [1] 2000 [3] BLJC 153 [B] & [2] 2007 [1] SLJSC 46 which provide that the Disciplinary Authority [DA, in short] is bound to give personal hearing while deciding on the point of disagreement and also the D.A and the Appellate Authority are bound to pass a speaking order, but these were not discussed by this Tribunal;

[2] that the order of the DA was beyond the allegation of the charge sheet as evident from para 4.7 of OA which was not denied by the respondents in the written statement; similarly, para 4.9 of OA was not denied in the written statement; and that the DA had not considered the reply of the applicant vide Annexure A/7 of OA;

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OA was not denied in the written statement; and that the DA had not considered the reply of the applicant vide Annexure A/7 of OA;

[3] that the finding of the Tribunal was beyond the material on record.

2. Heard the learned counsels for the applicant in the RA and the respondents on 19.07.2012 and perused the record. It is seen that the respondents in paras 4 5 of the written statement have traversed the averments of the applicant in paras 4.07 and 4.09 of the OA. No doubt the orders of the DA and the Appellate Authority are not detailed orders, but this Tribunal has examined the case in detail and taken a view in the the overall perspective, and the order is a well reasoned one. There is no averment in the OA that an oral hearing was sought by the applicant - C.O after receipt of the disagreement notice, nor is there any indication in the OA to the two judgments referred to above.

3. This Tribunal has rightly held in paras 3 and 4 of the order dated 01.10.2008 as follows:

"3.The scope of the Tribunal's interfering in the matter of disciplinary proceedings is limited unless there are grave procedural irregularities, denial of natural justice or exercise of power in a malafide way. We cannot interfere in a normal disciplinary proceedings case like this one. The Tribunal cannot place itself in the position of a super disciplinary authority.

4.We are, therefore, unable to interfere in the matter and issue any direction. Accordingly, the OA is dismissed. No costs."

3. In a review application, the power of the Tribunal to review its own order/ decision is very limited. In *Thungabhadra Industries Ltd. vs. Govt. of A.P.* [AIR 1964 SC 1372] it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected. In *Parsion Devi and Others vs. Sumitri Devi and Others* [1997 (8) SCC 715], it was held as under:-

"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". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

4. In State of West Bengal and Others vs Kamal Sengupta and Another in CA No. 1694 of 2006, the Hon'ble Supreme Court in order dated 16 June, 2008 has set out the principles for review as follows:

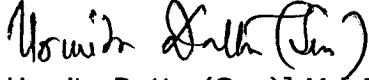
28. The principles which can be culled out from the above noted judgments are:

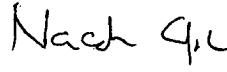
(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC. (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise. (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.

5. It cannot be said that the order of this Tribunal dated 1st October 2008 suffered from any error apparent on the face of record or which is self-

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evident. The grounds put forward in the RA would be the province of a Court of appeal. In the light of the principles set out by the Hon'ble Supreme Court for review as indicated above, the RA is dismissed. No order as to costs.


[Urmita Datta (Sen)] M [J]


[Naresh Gupta] M [A]

/cbs/