

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Monday the 5th day of July 2004

Coram: Hon'ble Shri A.K.Agarwal - Vice Chairman (A)
Hon'ble Shri S.G.Deshmukh - Member (J)

Review Petition No.18 of 2003

in O-A.95/99.

B.S.Rath,
4-B, Ganesh Bhavan,
Senapati Bapat Marg, Mahim,
Mumbai - 400 016.
(By Advocate Shri S.D.Dighe)

- Applicant

Versus

1. Union of India
through the General Manager,
Western Railways,
Churchgate, Mumbai 400 020.
2. The Divisional Railway Manager,
Bombay Division, Western Railway,
Bombay Central, Mumbai 400 008.
3. Pankaj Malaviya,
Ex.Additional Divisional
Railway Manager (O),
Bombay Division, Western Railways,
Bombay Central, Mumbai.
4. Smt.Chetana Kumar,
A.D.R.M. (T), Mumbai Central,
Mumbai - 400 008.
5. The Chief Electrical Distribution
Engineer, Churchgate, 5th Floor,
Station Building, Mumbai - 400 020.
(By Advocate Shri V.S.Masurkar)

- Respondents

O R D E R

Per:Hon'ble Shri S.G.Deshmukh, Member (J) -

The present Review Petition is filed by the applicant for review of the Order dated 31.1.2003 in OA 95/99.

2. OA 95 of 1999 was filed for quashing and setting aside the order dated 11.4.1997 and the order of the appellate authority dated 23.3.1999 regarding removal of the applicant and directing the respondents to reinstate the applicant with full back wages and continuity of service.

3. In the OA the Division Bench of this Tribunal upheld the findings of the disciplinary authority and the appellate authority with regard to the establishment of misconduct so far as Article II and III of the Memorandum of charges is concerned. However, the Tribunal set aside the order of punishment and directed the appellate authority to reconsider the matter with regard to quantum of punishment and thereafter pass an appropriate order in this respect except penalty of removal or dismissal from service within a period of three months from the date of receipt of copy of the order.

4. The applicant has filed this Review Petition contending that the respondents have deliberately suppressed the record to show what transpired between 19.12.1986 and 11.5.1987. It is the contention that he had brought the fact to the notice of the respondents in 1986, that the existing HUF property was developed and the flats constructed were sold to the purchasers by 1978. Hence there was no case for any further action for the respondents to initiate departmental action. There was also no cause of action at all and the initiation of departmental action in the year 1992 is malafide. The Enquiry Officer also had the knowledge about the applicant having submitted his Property Returns including information in the year 1987. The Enquiry Officer malafide did not draw adverse inference on account of non-production of defence submitted by the applicant in respect of Memorandum dated 19.12.1986. Thus it is the contention that

the observation of the Tribunal that there was nothing on record to show that ten flats were sold with the previous knowledge of the Government as is required under Rule 18 (2) is a conflicting observation. It is also the contention that the finding of the disciplinary authority in respect of Articles 2 and 3 which are upheld by the appellate authority are without basis and required to be quashed and set aside. Inordinate delay in initiating disciplinary action itself was sufficient to quash and set aside the entire proceedings.

5. Heard Shri S.G.Dighe, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.

6. In the case of Ajit Kumar Rath Vs. State of Orissa & others (1999 (8) Supreme 321), the Apex Court observed that the "power of review available to Tribunal is same as available to a Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an

erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it."

7. It is apparent that review cannot be claimed or asked merely for fresh hearing or arguments. The points which were not argued earlier cannot be allowed to be raised for the first time in review petition. The power of review can only be exercised for correction of patent error. A review cannot be granted on the ground that the decision is erroneous on merits. The decision is erroneous on merits can be a ground of appeal. The error which is not self-evident and has to be corrected by reasoning can hardly be said to be an error on the face of record justifying to exercise the power of review.

8. We neither find any mistake or error apparent on the face of record nor is there sufficient reason for reviewing the order in question. As mentioned above, power of review can only be exercised for correction of patent error of fact or law. The ground on which review is sought in the present case cannot be said to be a ground for review. The entire case cannot be allowed to be argued for reviewing the order in question. We do not find any merit in the Review Application. It is accordingly dismissed. No costs.

S.G.Deshmukh

(S.G.Deshmukh)
Member (J)



(A.K. Agarwal)
Vice Chairman