

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Review Application No.57 of 2003
(In O.A.219 of 2001)

Daniel Nirmal,
S/o Chandrakantrao Nirmal,
Senior Travelling Ticket Examiner,
South Central Railway,
Aurangabad,
under Station Manager,
Aurangabad.
R/o Sharadabai Compound,
Opp.Christchurch, Near Mission Hospital,
Jalna, Maharashtra.

Versus

1. Union of India
through the General Manager,
South Central Railway,
Secunderabad.
2. The Chief Commercial Manager,
South Central Railway,
Secunderabad.
3. The Additional Divisional Railway
Manager, South Central Railway,
Nanded.
4. The Divisional Commercial Manager,
South Central Railway,
Hyderabad Division (MG),
Secunderabad.

O R D E R

(Passed on this the 8th day of August 2003 at the
circulation stage)

The instant Review Petition in OA 219 of 2001 has been
preferred on the ground that the following errors of law are
apparent on the face of the record -

(a) The Tribunal in disregard of the decisions of co-terminus
Benches, one of which had been upheld by Andhra Pradesh High
Court, has on the strength of the stay order granted by Mumbai
High Court disagreed with the views expressed by those Benches.

(b) The Tribunal has not given reasons as to how Senior Scale officers are empowered to make appointments for posts carrying pay scales of Rs.5000-8000/-.

(c) ~~The Tribunal ought to have held that~~ ^{Conduct of enquiry, orders} ~~Appeal based on~~ ~~by disciplinary authority etc.~~ could not have taken place because ~~of orders passed in OA 694 of 1998.~~

2. The Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa and others, 2000(1) SC SLJ 1 has explained the scope of Section 22 (3)(f) of the Administrative Tribunals Act, 1985. The said decision is as follows -

"29. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given 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 person on the discovery of 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 fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for fresh hearing for arguments or for correction of an erroneous view taken earlier i.e. to say that the power of review can be exercised only for correcting of patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

30. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

3. It is also a settled principle of law that even if the Tribunal has taken an erroneous view the same cannot be corrected by way of a review petition and that the scope of review is much less than that of an appeal.

4. As far as the first question is concerned it may be noted that the Administrative Tribunals Act as originally drafted excluded the jurisdiction of the High Court and an appeal would be filed only in the Supreme Court. A Seven Judge Bench of the Apex Court in the case of L.Chandra Kumar Vs. Union of India, AIR 1997 SC 1125 held that the right of judicial review is a basic feature of the Constitution and struck down that part of Article 323 which conferred such power. The Apex Court held as follows -

"91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the Constitution. In R.K.Jain's case (1993 SCW 1899), after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal fails, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of the Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned

observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution: but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution."

5. It would be clear from the above-mentioned judgments that the party has to first approach the Division Bench of the High Court of the place where the Bench is located. A question therefore arises as to which of the two decisions, a Bench of the Tribunal will ~~sit~~ ^{follow}, a decision of the co-terminus Bench or a decision of the High Court of the place where the Bench is located. Similarly a question may arise that if there are two conflicting High Court decisions on the same subject, including ^{of the place} one of the High Court in which the Bench sits then which of the decision the Bench will follow. We have taken the view that the Tribunal is bound by the decision of the High Court at the place where it sits. It is a decision of ^{Mumbai} ~~a~~ Bench of this ^{tribunal} ~~High Court~~ following the decisions of co-terminus Bench which has been stayed by the Bombay High Court. It is in this background that we have taken the view that we are bound by the decision of the Bombay High Court.^{/6}. The issue relating to appointment of the applicant has been noted in Para 13 of the Judgment. The applicant produced at Annexure-A-11, copy of the communication sent to the Appointing Authority for appointment on compassionate grounds but has for reasons best known to him, not produced a copy of the appointment letter. The respondents Railway administration had produced a copy of the order issued by the General Manager in exercise of powers conferred under Para 215 of

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the Indian Railway Establishment Code by virtue of which the power of appointing authority had been delegated to the Senior Scale Officer.

7. The applicant had also taken the ground that because of the decision in the earlier OA, the proceedings had abated. This aspect and the judgment cited by the applicant are fully covered in paras 4&5 of the OA and does not need a review.

8. Under the circumstances, the review petition fails. It is accordingly rejected at the circulation stage.

Shankar Prasad
(Shankar Prasad) SPS
Member (A)

Kuldip Singh
(Kuldip Singh)
Member (J)

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