

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P. 83/2004
OPEN COURT / PRE DELIVERY JUDGMENT IN OA 1183/1993

Hon'ble Vice Chairnan / ~~Member (J)~~ / Member (A)

may kindly see the above Judgment for
approval / signature.

(S.G. Deshmukh)
V.C. / Member (J) / Member (A) K/S

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

Hon'ble Member (A) (K/S)

MW

18/11

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, AT MUMBAI.

R.P.No.83/2004

in

O.A.No.1183/1993

CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN
HON'BLE SHRI S.G.DESHMUKH, MEMBER (J)

Shri Narayan Kachroo Chowdhari
(By Shri D.V. Gangal, Advocate)

... Petitioner

vs.

Union of India & 2 Others
(By Shri S.C. Dhawan, Advocate)

... Respondents

ORDER BY CIRCULATION IN R.P.No.83/2004 DATED 18/11/2004.

Per: S.G.Deshmukh, Member (J):

The present Review Petition is filed by the applicant for reviewing the order of the Tribunal dated 27.8.2004 passed in O.A.No.1183/1993.

2. The applicant had filed the O.A. for quashing and setting aside the Show Cause Notice dated 6.10.1993 proposing to impose the penalty of dismissal from service, for a declaration that applicant has completed 36/31 years of qualifying service for the purpose of pension and other post retirement benefits and for a declaration that the applicant stands voluntarily retired with effect from 25.11.1992 and that he is entitled to be granted all pensionary and post retirement benefits and declaration that he is entitled to be granted full pay and allowances with effect from 3.10.1976 to 5.1.1991 and from 5.1.1991 to 25.11.1992.

3. The Tribunal has dismissed the O.A. by its order dated 27.8.2004. The applicant sought review of the order in question stating that once a dismissal order is set aside, the employee is required to be reinstated in view of Rule 5, Sub Rule 4 of the Railway Servants (Disciplinary & Appeal) Rules, 1968. It is also contended that it is common knowledge that unless and until an

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employee is in service, he will not be issued a notice for dismissal from service. It is also tried to contend that on setting aside of the dismissal order, reinstatement is the consequence and there is no question of execution of reinstatement. The applicant relies on the judgement of the Apex Court in the case of *A.P.SRTC vs. B.Vikram Reddy* 2004 SCC (L&S) 83 .

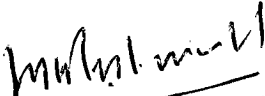
4. We have considered the R.P. and contentions raised on behalf of the applicant. In *Ajit Kumar Rath vs. State of Orissa & Others* 1999 (9) Supreme 3211, it has been observed by their Lordships that "the power available to Tribunal is same as available to a Court under Section 114 read with Order 47 of 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 new and important matter of 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 or law or fact which stares in the face without any elaborate argument being needed for establishing it."

5. It is apparent that the review cannot be granted on the ground that the decision is erroneous on merit. The error which is not self evidence and has to be detected by reasoning, can

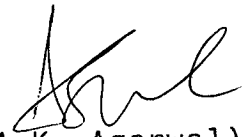
hardly be said as an error apparent on the face of the record justifying the Court to exercise the power of its review. The review does not necessarily reopen the questions already decided between the parties. The erroneous view of evidence or law is no ground for review though it may be a ground for appeal.

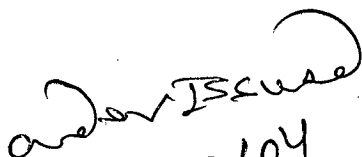
6. It also to be mentioned that in *B. Vikram Reddy's* case (supra) relied on by the applicant, the Labour Court's award was of reinstatement of respondent in appellant's service. The respondent was not reinstated in spite of award passed. In the instant case no such award of reinstatement was passed but only the removal was set aside. We have mentioned that the erroneous view of evidence or law is no ground for review. No review can be asked for on the ground of discovery of new authorities which show that the decision is incorrect.

7. In view of the above discussion, the R.P. deserves to be rejected being devoid of any merits. We order accordingly. No order as to costs.


(S.G. Deshmukh)
Member (J)

Sj*


(A.K. Agarwal)
Vice Chairman


11/12/04
