

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.701/98.

2003
Wednesday this the 8th day of January 2002.
Bmb

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

Mrs.I.M.Fernandes,
Central Railway Quarters,
R.B. II, 264/9,
Near Elphinstone Bridge, Parel,
Mumbai - 400 012.
(Applicant in person)

...Applicant.

v.

1. Union of India through
the General Manager,
Central Railway Headquarters
Office,
Mumbai CST - 400 001.
2. The Chief Personnel Officer,
Personnel Branch,
Central Railway,
Headquarters Office,
Mumbai - 400 001.
3. The Appellate Authority,
The Chief Works Manager,
Office of the Chief Works
Manager,
Central Railway Parel Workshop,
Parel,
Mumbai - 400 012.
4. The Disciplinary Authority,
The Dy. Chief Mechanical
Engineer (Diesel),
Office of the Chief Works Manager,
Central Railway Parel Workshop,
Parel,
Mumbai - 400 012.
5. Ms. Sapna Srivastava,
Ex-Senior Personnel Officer,
Office of the Chief Works Manager,
Central Railway Parel Workshop,
Parel,
Mumbai - 400 012.
6. Shri R.R.Rajak,
The Enquiry Officer,
Assistant Works Manager (Mech),
Office of the Chief Works Manager,
Central Railway,
Parel Workshop,
Parel,
Mumbai - 400 012.

(By Advocate Shri V.S.Masurkar)

...Respondent

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O R D E R

Birendra Dikshit, Vice-Chairman,

This OA is directed against an order imposing penalty of Compulsory Retirement after holding departmental proceedings against applicant.

2. The facts, in brief are that while posted as Head Mistress at Central Railway Mixed Middle School, Mumbai, the applicant has been compulsorily retired after holding her guilty for disobedience of the order of superiors and taking away files and documents on 26.6.1996 with a view to tamper in violation of Rules 3.1 (i) (ii) of Railway Servants (Conduct) Rules. The applicant's defence has been rejected against which she preferred Review Appeal/Revision Petition under Rule 24(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 (in short, D & A Rules) filed on 27.9.1997, which was also dismissed. Aggrieved, the applicant preferred review but since revisional authority did not dispose of the same for more than six months, the applicant approached this Tribunal for determination of dispute by present OA under Section 20(2) (b) of Administrative Tribunals Act, 1985.

3. The Petitioner, who appeared in person, argued that the Authority who initiated proceedings as Disciplinary Authority was not competent to initiate the same, as they could be initiated by CPO, Central Railway only and not by Dy. Chief Mechanical Engineerr, Central Railway, Parel, who initiated it. She contended that beside charge sheet being not issued by a Competent Authority, even the relevant documents which were being relied upon to substantiate the charges were not supplied to her;

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that even on demand, relevant documents were not given to her which were required for submitting her reply in defence; she did not get adequate opportunity for filing detail reply which could be filed after receipt of relevant documents and even while submitting her reply by abundant caution she made it clear that she will be submitting her detail reply after receipt of the documents; that the case has been decided without providing proper opportunity even for submitting reply in defence; that the cross-examination of witnesses was also not allowed during enquiry and the defence witnesses were not allowed to be examined. In respect of charge about tampering of documents she contended that there was no question in respect of tampering of documents and reading out certain parts of OA she contended that charges have not been established against. The applicant referring to memo of appeal and the order therein, she contended that against the order of penalty of compulsory retirement by Disciplinary Authority she preferred an appeal on 6.8.1997 wherein she made specific prayer in para 29 for personal hearing, but the appeal has been dismissed without providing any opportunity of personal hearing. Referring to memo of appeal she further contended that the points she is pressing presently, before this Court about competency of the Disciplinary Authority to initiate the proceedings and issue charge sheet as well as allegations about allegation of removal of files for tampering, were taken up in appeal, yet the Appellate Authority without considering these aspects confirmed the penalty awarded by a non-speaking order which is bad in law and, therefore, the orders of Disciplinary Authority as well as Appellate Authority are

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liable to be quashed for want of reasons also. Referring to her Review Appeal/Revision Petition she pointed out that she preferred Review Appeal/Revision Petition but as it has not been decided for more than six months that this OA has been filed and therefore, it be considered on merits claiming that orders of Appellate Authority are liable to be quashed and set aside being bad in law.

4. The Learned Counsel for Respondents Shri V.S.Masurkar opposed the arguments on merits. He contended that the findings having been recorded after providing full opportunity of defence to applicant and there is no procedural error due to which the orders of two authorities can be interfered with by this Tribunal. He has justified that it was not necessary for Appellate Authority to hear the applicant personally and the appellate authority has passed order after considering all aspects dismissed the appeal. He contended that as appeal stands dismissed, all points stand considered on dismissal of appeal, which is on merit.

5. We have examined the arguments in the light of record before us. This is a case in which we need not go into merits, as we find that the order of Appellate Authority cannot be sustained for want of reasons and confirming the finding even after broadly examining the evidence. The appellate authority has passed a non-speaking order wherein the points raised in appeal are such that even if he was not satisfied with the contentions raised by applicant, *he ought to have* assigned reasons for upholding the findings recorded by Enquiry Officer which stood accepted by Disciplinary Authority. The applicant specifically challenged *is. order*

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the competency of the Disciplinary Authority who initiated proceedings and issued the charge sheet. The appellate authority did not whisper a word as to why he was not accepting the contention of applicant. Similarly, applicant stated about want of proper opportunity in defending herself and asked for a personal hearing. It was obligatory for appellate authority in such a matter to examine the record and could uphold findings either way in respect of competency of the authority concerned or on merits but that could be done after assigning the reasons, which he has failed to do. Thus, we are satisfied that the Appellate Authority's order is liable to be quashed for above reasons and the case be reconsidered by appellate authority. We make it clear that while considering appeal he will examine afresh applicant's objection in respect of procedure adopted and findings recorded by the Disciplinary Authority. For said reason, the Order of Appellate Authority (Respondent No.3) is liable to be quashed and considering the nature of case the appellate authority is to be ordered to decide the appeal afresh after affording an opportunity of personal hearing to the applicant within a fixed time as it is an old matter.

6. There has been some dispute in respect of continuance of applicant in Railway Quarters which she was provided by Respondents officially. We find that this Court in OA No.912/97 Smt. I.M.Fernandes Vs. UOI decided on 23.4.1998 directed that applicant shall not be dispossessed from the quarters atleast for two weeks from the date of disposal of the revision/review petition by the competent authority. It is an admitted fact that revision has not been decided. In view of the said fact, the

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applicant is entitled for an order to the effect that unless she stands already dispossessed, the order that she will not be dispossessed for a period of two weeks from the date of disposal of the revision or review petition is being substituted to the effect that the applicant shall not be dispossessed from the quarter in question for two weeks from the date of disposal of appeal.

7. For the aforesaid reasons, the OA is allowed, the order dated 6.8.1997 of the Appellate Authority (Respondent No.3) passed in appeal is quashed and the Appellate Authority is directed to dispose of the appeal afresh in the light of aforesaid directions after affording opportunity to applicant a personal hearing; the appeal be disposed of hearing within a period of four months from the date of receipt of certified copy of this order. The applicant shall not be dispossessed from quarter allotted to her by Railways, unless she has already been dispossessed, for a period of two weeks from the date of disposal of appeal.

B.N. Bahadur

(B.N. BAHADUR)
MEMBER(A)

gr. 03.

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 16/2003 **IN O.A. No.** 701/98.

Dated this Friday the 2nd day of January, 2004.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

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

Mrs. I. M. Fernandes

...

Applicant.

(In person)

VERSUS

Union of India & others

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Respondents.

(By Advocate Shri V. S. Masurkar)

ORDER ON REVIEW PETITION

PER : Shri S. G. Deshmukh, Member (J).

This is a Review Petition filed by the original applicant for reviewing the order dated 08.01.2003 in O.A. No. 701/1998 for correcting the errors and omission mentioned in para 2 (a) to para 2(m).

2. The applicant had filed an O.A. bearing No. 701/98 challenging the order imposing penalty of compulsory retirement dated 31.05.1997 and Appellate Order dated 16.08.1997. The Tribunal has allowed the O.A. on 08.01.2003 by quashing the order of the Appellate Authority dated 16.08.1997 passed in appeal and directed the Appellate Authority to dispose of the appeal afresh in the light of the observations in the order by giving an opportunity to the applicant of personal hearing, within a period of four months from the date of receipt of certified copy of the order. It was also ordered that applicant shall not be dispossessed from the quarter allotted to her by Railways, unless she has already been dispossessed, for a period of two weeks from the date of disposal of appeal.

3. In Ajit Kumar Rath V/s. State of Orissa & Others [1999 AIR SCW 4212] the Apex Court has observed as follows :

"The provisions of S.22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a Court under S. 114 read with O.47, C.P.C. The power is not absolute and is hedged in by the restrictions indicated in O.47. The power can be exercised on the application of a 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 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. It may be pointed out that the expression "any other sufficient reason" used in O.47, R.1 means a reason sufficiently analogous to those specified in the rule. 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 judgement."

As per Order 47, Rule 1, it is only "person aggrieved" by an order can apply for review. A person aggrieved means a person who has suffered a legal grievance, man against whom decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something.

4. In the instant case, the O.A. was filed by the petitioner herself for quashing and setting aside the order imposing penalty of compulsory retirement. The said O.A. is allowed by the Tribunal and the order of the Appellate Authority has been quashed and set aside and the Appellate Authority has been directed to dispose of the appeal afresh. Thus, the order in the

O.A. in question is in favour of the applicant. The applicant cannot be said to be an aggrieved person by the order in question. As per Order 47, Rule 1, only persons aggrieved by the order can apply for review.

5. The petitioner is claiming review of the order correcting the errors and omissions mentioned in para 2(a) to 2(m) in the Review Petition. After going through the Review Petition there appears no mistake or error apparent on the face of the record. 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. There is no sufficient ground for review of the order in question. We cannot, under cover of review, arrogate to itself the power to decide the case over again. The review cannot be claimed for fresh hearing or arguments or the correction of the view taken in the order.

6. The R.P. is devoid of merits and is accordingly dismissed.


(S. G. DESHMUKH)
MEMBER (J).


(ANAND KUMAR BHATT)
MEMBER (A).

OS*

R.P. order
Issued on - 6/1/04
