

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

REVIEW PETITION NO. 23 OF 1990

in

O.A. No. 477 of 1987

Date of the order: 23-4-90.

Between

V.Satya Vara Prasad ... PETITIONER/  
Applicant

And

1. Sr. Divl. Personnel Officer, Sec'bad  
(B.G)Division) South Central Rly.,  
Secunderabad.
2. The Chief Personnel Officer,  
S.C.Rly., Secunderabad.
3. The General Manager,  
S.C.Rly., Secunderabad.
4. The General Secretary,  
Indian Railway Conference Association,  
(IRCA), New Delhi.
5. The Senior Divl. Mechanical Engineer(C&W),  
B.G.Divn., Secunderabad.
6. Sri B.Rohini Kumar

... RESPONDENTS/  
Respondents

Appearance:

For the Applicant : Mr.G.V.Subba Rao, Advocate

For the Respondents 1-5: Mr.N.R.Devaraj, SC for Rlys.

CORAM:

The Hon'ble Sri D.Surya Rao, Member (Judicial)

and

The Hon'ble Ms. Usha Savara, Member (Admn.)

contd....

(ORDER OF THE BENCH PASSED IN CIRCULATION)

This Review Application is filed for reviewing the order passed by this Tribunal in O.A.No. 477/1987. The Original Application was filed by an employee of the South Central Railway alleging that after his initial recruitment by the Railway Service Commission and after completion of training he was transferred to the Indian Railway Conference Association (IRCA). He had alleged that this transfer and posting was illegal. It was sought to be contended that his original appointment was in the South Central Railway and as such his transfer to IRCA could at best be termed as temporary transfer allowing him to retain <sup>a</sup> <sub>1</sub> lien in the parent organisation. Subsequently the applicant was brought back to the South Central Railway treating his <sup>representation</sup> <sub>request</sub> as a request transfer <sup>and thereby</sup> giving him bottom seniority. After coming back to the South Central Railway, the applicant started agitating for seniority <sup>on the ground that</sup> <sub>as though</sub> his original appointment was only to the South Central Railway. Since this was denied, he filed the O.A. No.477/87. The plea of the Respondents was that the applicant had been sent to IRCA after he had given his willingness. The defence, therefore, was that his coming back to the South Central Railway was only on request which entails that he should be given bottom seniority. The original order of willingness, however, could not be produced by the Respondent-Railways.

contd...

This Tribunal, after going through the records and after hearing the arguments on both the sides, had held that there was acquiescence <sup>on the part of</sup> that the applicant, ~~that he~~ had never questioned his initial posting to IRCA in the year 1977, that he had accepted such posting without demur and that he was a willing party.

The subsequent representations made from 1983 onwards that he had not given his willingness, therefore, was not accepted. The fact that he had also accepted the bottom seniority without demur was also a factor taken into consideration by this Tribunal in holding that he was a willing party to the posting to IRCA. It is this order which is sought to be questioned in this Review Application. The main contention is that the decision of the Tribunal is contrary to law and the facts appearing on record. In fact, it is contended that the decision of the Tribunal holding that the applicant had given his willingness is a wrong decision. It is sought to be contended that in the absence of original document wherein the applicant was alleged to have given his willingness, it should be presumed that the applicant had not ever given his willingness and an adverse inference should have been drawn. In our view, these contentions are wholly untenable and beyond the purview of a Review Application. Certain reasons have been given by this Tribunal for coming to the conclusion that the transfer or posting of the applicant to IRCA was to his knowledge and after obtaining his willingness. The acquiescence on the part of the applicant was also a factor which weighed

with the Tribunal. The applicant now states that this reasoning is a wrong reasoning. If the applicant is aggrieved, his remedy is not by way of review but by way of an appeal. The scope of this Review petition is wholly misconceived. The grounds raised are all grounds of appeal and not errors apparent on the face of the record. In AIR 1979 SC 1047 (A.P.Sharma Vs. A.P.Sharma & Ors.), the Supreme Court has held as follows:

"But there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal".

Again in AIR 1975 SC 1500 (Chandra Kanta Vs. Sh.Habib), the Supreme Court held as follows:

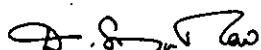
"The review of a judgment is a serious step and reluctant resort to it is proper only where the glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. . . ."

In the instant case before, us, the review application does not disclose any such glaring omission or patent or grave mistake and on the other hand, as stated supra, the grounds raised seek to attack the order under review on the ground that wrong assumptions and conclusions have been arrived at or to re-agitate matters already argued at length. The power of the Tribunal to review

its orders is akin to the power under Order 47, Rule 1 of C.P.C. and can be exercised only:

- i) when any new and important material or evidence is discovered which was not in the knowledge of the applicant or which could not be produced at the time when the final judgment was pronounced;
- ii) when there is any mistake or error apparent on the face of the record; and
- iii) for any other sufficient cause.

In the instant case none of the grounds specified in the said provision would be applicable. We accordingly find no valid grounds for reviewing our order dated 15-9-1989 in OA 477/87. The Review application is dismissed. No costs.



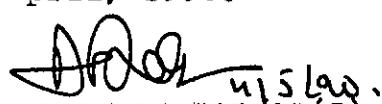
(D. Surya Rao)  
Member (J)



(Ms. Usha Savara)  
Member (A)

Dated: 23rd ~~th~~ day of April, 1990.

mhb/



T.V. DEPUTY REGISTRAR (J)

T.O:

1. The Senior Divisional personnel officer, Sec'bad (B.G. Division) south central railway, Sec'bad.
2. The Chief personnel officer, S.C.Railway, Sec'bad.
3. The General Manager, S.C.Railway, Sec'bad.
4. The General Secretary, Indian Railway conference Association, (IRCA), New Delhi.
5. The Senior Divisional Mechanical Engineer (C&W) B.G. division, Sec'bad.
6. One copy to Mr. G.V. Subba Rao, Advocate, 1-1-230/33, Jyothi Bhavan, Chikkadpally, Hyderabad-500 020.
7. One copy to Mr. N.R. Devaraj, SC for Railways, CAT, Hyd.
8. One spare copy.

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