

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

R.P.No.28/93

in

O.A.No.681/89

Date of Order: 10th June 1993

BETWEEN :

G.S.Azaraiah

.. Petitioner/
Petitioner

A N D

General Manager,
South Central Railway,
Secunderabad.

.. Respondent/
Respondent.

Counsel for the Petitioner

.. Mr. G.S.Azaraiah
Party-in - Person

Counsel for the Respondent

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI A.B.GORTHY : MEMBER (ADMN.)

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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Order of the Division Bench delivered by
Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.)

This Review Petition is filed by the Petitioner herein under Section 22 (ii) (a) of the Administrative Tribunals Act, read with Rule 17 of the Central Administrative Procedures Rules, 1987 to review our Judgement dated 19.2.93 in O.A. 681/89.

2. The facts so far necessary to decide this RP in brief, may be stated as follows:

3. The applicant was originally working as ASTE (Assistant Signal and Telecommunication Engineer) in South Central Railway. On adhoc arrangement, he was working as DSTE (Divisional Signal and Telecommunication Engineer) in the Senior scale. By orders of the Railway Board, the applicant was relieved on 24.2.83 on transfer to Central Railway. He did not comply with the order. The General Manager, Central Railway, issued a charge sheet on 19.5.85 charging him with serious mis-conduct on the ground that the applicant remained unauthorisedly absent from duty from 16.11.83 onwards. A regular departmental enquiry was held and the applicant had been dismissed from service as per the orders of the President of India dated 5.1.89. Questioning the validity of the dismissal order dated 5.1.89 with regard to the dismissal of the applicant, the applicant filed OA 681/89 on the files of this Tribunal. By orders dated 19.2.93, this Tribunal upheld the dismissal order of the applicant and dismissed OA681/89.

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3. We have heard in detail the Review Petitioner in person and Mr. N.R. Devraj, Standing Counsel for the respondents.

4. It is contended by the applicant in this Review Petition that his transfer order from South Central Railway to Central Railway is illegal as he was DSTE in the South Central Railway at the relevant time^{and} that the competent authority had no power to post him as ASTE in Central Railway. So it is maintained by the review petitioner as ^{the} transfer order itself is illegal that this Review Petition is liable to be allowed.

5. At page 6 and 7 of the judgement the Bench had held as follows:-

"There was a direction to the applicant from the High Court to join duty at Bombay. The applicant did not carry out the direction of the Court. He had continued to defy the administrative order issued by the General Manager, Central Railway. In the various pleadings as well as in the course of the hearing, the applicant was persistently alleging that the transfer order issued was illegal in that he was DSTE in the South Central Railway and he should not be posted as ASTE in Central Railway. It is seen from the records that his posting as DSTE in South Central Railway was only an adhoc arrangement and not a regular arrangement in accordance with the promotion rules. Such being the case, this transfer out of South Central Railway, had to be only in the substantive post. We see no illegality whatsoever in the order of transfer issued by the respondents. The conduct of the applicant who occupied a fairly senior level post in the Railways is quite appalling. The charge against him is fully proved. There is no justification whatsoever for his conduct and there was no illegality in the transfer order or in the charge sheet or the dismissal order that followed it."

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6. In view of the categorical findings in the OA extracted above, we are unable to understand how it is open to the applicant to raise the very same ^{plea} ~~point~~ raised in the Review Petition. Hence the contention of the applicant ~~on the ground~~ that the transfer order was illegal as he was DSTE, South Central Railway and was posted as ASTE, Central Railway cannot be accepted.

7. It is nextly contended by the applicant that in dismissing the applicant that UPSC was not consulted and that the dismissal of the applicant without consulting UPSC is not valid, and that this Tribunal had not dealt that aspect of the case in its judgement dated 19.2.1993 and that the same constitutes error apparent on the face of the record and so the judgement is liable to be reviewed. We have gone through the record. The record discloses that the UPSC had been consulted and remarks obtained before the applicant had been dismissed from service. So, the contention of the applicant that his dismissal is bad as UPSC had not been consulted in dismissing him cannot be accepted.

8. Article 320 Clause 3 deals also with the question of consultation with the UPSC in cases where punishments are sought to be imposed on certain Government employees in the disciplinary proceedings. The Supreme Court in State of U.P. Vs. Membhodan Lal Srivasthava A.I.R. 1957 SC 912 had held that the provisions of Article 320 (3) of the Constitution of India are not mandatory and action of the Government taken without consultation with the Union Public Service Commission will not be invalid and as such will not afford the civil servant any cause of action in a court of law. So, that being the legal position it is not open to the applicant to contend that his dismissal from service is bad for non-consultation with the Union Public Service Commission.

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9. After giving a careful thought to all the issues raised in the OA, the Bench held that there were no merits in the OA filed by the applicant and was liable to be dismissed and accordingly dismissed as per the judgement dated 19.2.1993.

10. We have gone through the grounds urged in this Review Petition. The very same points that were urged in the OA are again sought to be raised in this Review Petition. The aim of the petitioner appears to be to point out some error or the other, even though, according to us, there is none and to make the entire case re-opened and re-heard. It is needless to point out, review of a judgement is required when there is an error apparent on the face of the record. A court reviewing the judgement cannot act as a court of appeal and re-appraise the entire material before it.

11. In this context, it will be pertinent to refer to a decision reported in AIR 1979 SC 1047 Arbhama Tuleswar Sharma Appellant, Vs Arbhama Pishak Sharma and others respondents wherein it is laid down as follows:

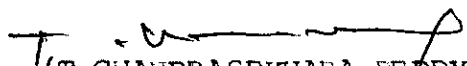
" It is true there is nothing in Art 226 of the Constitution to preclude the High Court from exercising the power of review which inheres every court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence, which, after the exercise of diligence was not within the knowledge of the person seeking the review or could not be produced by him

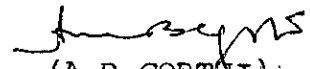
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at the time when the order was made;
it may be exercised where some mistake
or error apparent on the face of the
record is found. -----

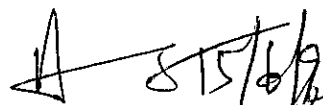
A power
of review is not to be confused with
appellate court to correct all manner
of errors committed by the sub-ordinate
court."

12. The above decision applies on all fours to
the facts of this RP. If the petitioner is aggrieved by
our order dated 19.2.1993 passed in OA.681/89, the remedy
of the petitioner lies by way of an appeal to the Supreme
Court. So, absolutely, we see no grounds to interfere
with our judgement. dated 19.2.1993 passed in OA.681/89 and
hence, this review petition is liable to be dismissed and
is dismissed accordingly.


(T.CHANDRASEKHARA REDDY)
Member (Judl.)


(A.B.GORTHI)
Member (Admn.)

Dated: 10 May 1993


Deputy Registrar (J)

To

1. The General Manager, S.C.Rly, Secunderabad
2. One copy to Mr.G.S.Azaraiah, Party-in-person, Plot NO: 32, Tanakpuri Sec'bad - 500003.
3. One copy to Mr.N.R.Devraj, SC for Rlys. CAT.Hyd.
4. One copy to Hon'ble A.B.Gorthi, Member(A) CAT.Hyd.
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TYPED BY _____ COMPARED BY _____
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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HYDERABAD BENCH
HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

THE HON'BLE MR. _____

V.C.

AND

THE HON'BLE MR. ~~R. BALASUBRAMANIAN: M(A)~~ *A. B. Gorthi: M(A)*

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY: M(J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 10 - 6 - 1993

ORDER/JUDGMENT:

R.A./ C.A./ M.A. No. 28/93

in

O.A. No.

681/89.

T.A. No.

(W.P. No. _____)

Admitted and Interim Directions issued

Allowed

Disposed of with direction

Dismissed

Dismissed as with direction

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.

