

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of Decision: 29/7/2010

REVIEW APPLICATION No. 5/2010 & MA 162/2010

IN

ORIGINAL APPLICATION No.256/2006

CORAM :

HON'BLE MR.K.S.SUGATHAN, ADMINISITRATIVE MEMBER
HON'BLE MR.K.B.SURESH, JUDICIAL MEMBER

Puran Chand Sogra
S/o Shri Mangl Sen,
R/o Near Sharma Kirana Store,
Purohitji ki Tapri,
Kota Junction (Raj.).

... Applicant

Versus

1. Union of India through
General Manager,
West Central Railway,
Zone Jabalpur (MP).
2. Chief Mechanical Engineer,
West Central Railway,
Zone Jabalpur (MP).
3. Appellate Authority cum Chief Works Manager,
Wagon Repair Shop,
Kota Junction.
4. Deputy Chief Mechanical Engineer (R&M),
Wagon Repair Shop,
Kota.

... Respondents

ORDER

PER HON'BLE MR.K.S.SUGATHAN

This Review Application is filed by the applicant in OA 256/2006 for modifying the order passed in that OA. The order in that OA was pronounced on 29.1.2010 but the Review Application is filed more than three months after certified copy was issued on 1.2.2010. In an MA filed alongwith the Review Application, the applicant has prayed for condonation of delay on the ground that the delay took place due to a communication gap and there was no malafide intention. In the interest of justice, delay in filing the Review Application is hereby condoned.

2. The operative portion of the order in OA 256/2006 reads as follows :

"7. For the reasons stated above, the Original Application is allowed to the extent that the charge sheet and penalty orders are set aside. The pay scale of the applicant is restored to its original position with consequential benefits. The respondents are, however, at liberty to initiate fresh proceedings by the competent appointment authority. This exercise can be done without shifting the present location of the applicant. There is no order as to costs."

3. In the present Review Application the applicant seeks deletion of the liberty given to the respondents to issue fresh charge-sheet. The grounds cited by the applicant for review of the order is that the applicant already stood punished on account of the transfer from Kota to Bhopal and therefore the liberty given to the respondents to issue fresh charge-sheet would result in issue of another charge-sheet and another transfer for the same misconduct and thereby double jeopardy which is not sustainable in law.

4. The aforesaid ground cannot stand the test of a legal scrutiny. Transfer is not punishment under Discipline Rules. In the OA, the applicant had challenged the punishment awarded to him on the ground that the officer who issued the charge-sheet was not competent to do so. The contention of the applicant was accepted and the order of penalty has been set aside by the Tribunal. As the ground for quashing the charge-

sheet and penalty was procedural infirmity committed by the respondents, it was considered necessary to give liberty to the respondents to issue fresh charge-sheet. The liberty given to the respondents to issue charge-sheet by the competent officer cannot be construed as error apparent on the face of the record warranting review of the order.

5. The power to review one's own order can be exercised only if there is an error apparent on the face of the record or on the discovery of new evidence that could not be produced despite due diligence. The said principle has been laid down by the Hon'ble Supreme Court in **Ajit Kumar Rath v. State of Orissa** [2000 SCC L&S 192]. The following extract from the said judgement is relevant :

"30. 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 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 Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

6. As already stated supra, the ground cited by the applicant cannot be construed as an error in the judgement. Nor is there any new evidence.

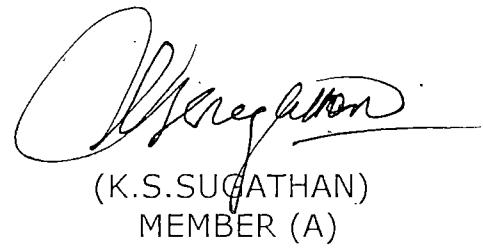
7. In view of the above discussion, we are of the considered opinion that ground cited by the applicant cannot be accepted.

The liberty given to the respondents cannot be deleted from the order.

8. For the reasons stated above, the Review Application is dismissed, by circulation.



(K.B.SURESH)
MEMBER (J)



(K.S.SUGATHAN)
MEMBER (A)

vk