

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR**

Date of the Order: 05/04/2004

**Review Application No. 10/2004
in
Original Application No. 455/2003**

CORAM:

**The Hon'ble Mr. J.K. Kaushik, Judicial Member
The Hon'ble Mr. A.K. Bhandari, Administrative Member**

1. Sumer Singh S/o Shri Suraj Singh, aged about 41 years, R/o A-107, Tara Nagar - A, Jhotwara, Jaipur, presently working as Conductor.
2. M.A. Khan, S/o Shri H.U. Khan, aged about 43 years, R/o 27, Jaganath Puri, Kalwar Road, Jhotwara, Jaipur, presently working as Conductor.

...Applicant.

VERSUS

1. Union of India, through General Manager, North-West Railway, Jaipur.
2. The Divisional Railway Manager, North-West Railway, Jaipur.
3. Shri Radhey Shyam Sharma, presently working as Head T.T.I. - C.T.I. Jaipur Station, Jaipur.

...Respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri Sumer Singh and Shri M. A. Khan have filed this Review Application under section 22(3)(f) of Administrative Tribunal Act, 1985 (sic Section 17 of the Central Administrative Tribunal Act, 1985) against the order passed in Original Application No. 455/2004 on 11.12.2003, dismissing the same.



2. The review application comes up for consideration by circulation. The applicants challenged the aforesaid order before Hon'ble Rajasthan High Court at Jaipur Bench in DB Civil Writ Petition No. 675/2004 wherein their Lordships has passed the following order:-

" Thus, we see no reason to interfere with the impugned order of the Tribunal. The petition stands dismissed.

However, liberty is given to the petitioners to approach the Tribunal on these factual aspects of the case. In case a review petition is filed within a period of one month, the Tribunal is directed to entertain the same. The writ petition stands dismissed."

Keeping in view the aforesaid directions, we are entertaining this Review Application on merits (i.e. ignoring the question of limitation).

3. The factual aspect as enunciated in the review application is that the applicants could not secure 60% marks in aggregate and that is the main reason of dismissal of the OA. The review application has been filed on the ground that the judgement is contrary to the RB Circular dated 20.10.1999 which was not within the knowledge of the applicants. The applicants have been given 4 marks for records of service and they would have at least secured 6 marks. The applicants have been treated as junior most candidates despite rendering 13 years service on the feeder post. The circular dated 20.10.1999 was not produced by the respondents before this Tribunal. The Hon'ble High Court has given direction to approach this Tribunal on factual matters.

Had the said circular been brought to the notice before Tribunal,



the applicants would have succeeded hence the order should be recalled and reviewed.

4. As far as the law position is concerned regarding the review, Section 22(3)(f) of the Administrative Tribunals Act, 1985 confers on an Administrative Tribunal discharging its functions under the Act, the same powers as are vested in a civil court under Order 47 Rule 1 of the Code of Civil Procedure while trying a suit in respect, inter alia, of reviewing its decisions.

5. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, the supreme Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, wherein their Lordships have made the following pertinent observations: (SCC p. 390, para 3) 1 (1979) 4 SCC 389: AIR 1979 SC 1047

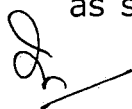
"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive 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. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."



6. Now we would advert to the facts of the review application and applying the aforesaid principles to the same. The applicants have not disclosed as to at what point of time the Railway Board Circular dated 20.10.99 came to their notice. The circulars of Railway Board are circulated by all the divisions of Railways and they are published by the Private publishers and therefore readily available in the markets. These are statutory rules. Ignorance of law is no excuse. Had the applicants been little diligent they would have known the same. Thus it is not the case of the applicants, where there is a 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.

7. We also find the applicants have not taken any plea regarding assignments of marks for records of service in the Original Application. They can not be allowed to raise/place new grounds and facts which were available to them at the time of hearing of the case. They can not have rehearing of the case in the name of review, in the facts and circumstances of this case. We do not find that there is otherwise any error apparent on face of the records which may necessitate recalling of the order.

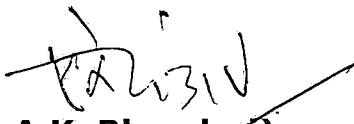
8. It would be pertinent to notice that unchecked review has never been the rule. We find that this review petition is not supported by proper grounds and the same is not maintainable as such. Thus no interference is called for from this Bench of the



Tribunal. If such groundless reviews are permitted every disappointed litigant may avenge his defeat by a routine review petition. (P. N. Eswara Iyer v. The Registrar, Supreme Court of India AIR 1980 SC 808 refers).

9. We also notice that the original Application was filed on behalf of four applicants but the review has been filed on behalf of two applicants and the other two applicants ought to have been impleaded as performa respondents but the same has not been done. The review application also suffers from non-joinder of parties.

10. In the premises, the Review Application No. 10/2004 is meritless and the same stands rejected by circulation. No costs.


(A.K. Bhandari)
Administrative Member


(J.K. Kaushik)
Judicial Member

Kumawat