

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 12-4-04

RA 12/2004 (OA 541/2003)

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, Railway Mantralaya, New Delhi.
2. General Manager, North Western Railway, Jaipur.
3. General Manager, Central Railway, Mumbai-CST.

... Petitioners

Versus

R.P.Meena, IRTS, Asstt.Operations Manager (Training), Zonal Training Centre, Udaipur.

... Respondent

CORAM:

HON'BLE MR.J.K.KAUSHIK, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

ORDER

PER HON'BLE MR.J.K.KAUSHIK

This RA has been filed on behalf of Union of India & Others u/s 22(3) of the Administrative Tribunals Act, 1985 for review of the order dated 18.2.2004 wherein the following direction was given :

"15. The upshot of the aforesaid discussion is that the OA deserves to be accepted in part. The same is accordingly allowed. The respondents are directed to act upon the proceedings of the DPC dated 21.1.2004 and consider him for adhoc promotion to the Sr.Scale within a period of two months from the date of receipt of a copy of this order. In the facts & circumstances of the case, there shall be no order as to costs."

2. The main ground for seeking review has been narrated in para-4 of the RA, the same is extracted as under :

"4. That the applicant was served with another major penalty charge sheet on 31.7.2001, the proceedings of which are still pending against him. After operationalization of this NWR new Zone on 10.10.2002, the first DPC for the applicant in NWR has been convened on 21.1.2004 to adjudge his suitability for regular promotion in Senior Scale. However, its proceedings have been kept in a sealed cover as DAR proceedings are still pending against him. His case will now be reviewed after 6 months of the date 21.1.2004, i.e. the first DPC convened in this NWR new zone by the appointing authority (Railway Board) in terms of para 4 of Railway Board's letter dated 21.1.1993."

3. It has also been averred that the review for adhoc promotion is required to be carried out in case the proceedings are not concluded within

*[Signature]*

a period of two years from the date of first DPC. In para-6 it is submitted that case of the applicant was reviewed for considering the desirability of giving adhoc promotion and accordingly DPC has been held on 21.1.2004 as per para 4.6 of the reply to the OA 541/2003 and this has been observed by this Bench of the Tribunal. Therefore, as per Railway Board's circular, the DPC is required to be held only after two years from the date 21.1.2004. The Hon'ble Tribunal has ignored the entire facts of the case placed on record in reply by the petitioners and not taken into consideration the fact that the case of the applicant was already considered by the General Manager to give him regular promotion.

4. We have considered the pleadings of this case. Before proceeding further, we would like to notice the law on the review and the powers of the Tribunal in this matter. The powers of review, which is granted to an Administrative Tribunal, is similar to power given to a Civil Court under Order 47 Rule 1 of the Code of Civil Procedure. Therefore, any person (inter alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1(1)(a). This position is settled by the Apex Court in case of Gopabandhu Biswal v. Krishna Chandra Mohanty & Ors., 1998 SCC (L&S) 1147.

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 Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047, has held as under :

"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 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."

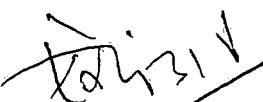
6. Now adverting to the facts in this case and testing the same on the

touchstone of the above principles. Firstly, it is very strange that the respondents are now twisting the factual aspects of the matter inasmuch as in para-6, as extracted in para 13 of the judgement, it has been clearly stated that case of the applicant was reviewed by the competent authority to consider the desirability of giving adhoc promotion to the Senior Scale and thereafter DPC was conducted on 21.1.2004. It is nowhere mentioned that this DPC was conducted for regular promotion. It is also not mentioned that this was the first DPC conducted by the North Western Railway. However, as per the Railway Board's circular it also does not specify regarding first DPC whether it is conducted by one zone or the other, there is no such classification. It only says that after two years from the first DPC if the proceedings are not complete then adhoc promotion would be considered. The Tribunal has adjudicated upon the matter on the facts placed on record and the submissions made during arguments. If the decision is erroneous on merits by any stretch of imagination, that would be province of a court of appeal as indicated in the aforesaid preposition of law.

7. The respondents have not even whispered any word relating to the grounds of the review e.g. there is no 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; nor some mistake or error apparent on the face of the record is found in the order. It would be pertinent of notice that unchecked review has never been the rule. We find that proper grounds do not support this RA and the same is not maintainable as such. Thus, no interference is called from this Bench of the Tribunal.

8. Before parting with the case we have a note of caution for the respondents that they should not file a review by changing the very facts and should not submit new facts which have not been pleaded in the OA or during arguments in the fashion they have sought in this case. We also find that copy of the reply has been annexed to the RA, which is uncalled for and makes the petition unnecessarily bulky in addition to burdoning the public exchequer, which could have conveniently been avoided. The respondents are desisted from filing such reviews; rather they should keep their own houses clean instead of blaming someone else.

9. In view of what has been said and discussed above, this RA sans merit and the same stands rejected accordingly, by circulation.

  
(A.K.BHANDARI)

MEMBER (A)

  
(J.K.KAUSHIK)

MEMBER (J)