IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 27th day of January, 2011

Review Application No. 2/2011
(Original Application No.278/2010)

Surendra Singh Jangid
s/o Shri R.R.Jangid,
r/o Plot No.12-A New Gopal Vihar,
Baran Road, Kota
Ex.HTTE Kota Division,
Sawai Madhopur.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India through
   General Manager,
   West Central Railway,
   Jabalpur

2. Divisional Commercial Manager,
   WC Railway,
   Kota Division,
   Kota.

3. Shri J.S.Kothari
   Sr. Enquiry Officer,
   Vigilance Branch,
   WC Railway,
   Jabalpur.

4. Sr. Divisional Commercial Manager,
   Kota Division,
   Kota.

... Respondents

O R D E R (By Circulation)

The applicant has filed this Review Application against the judgment dated 16.11.2010 whereby the OA filed by the applicant was disposed of with direction to the applicant to file statutory appeal before the Appellate Authority within a period of four weeks from the date of judgment and it was further held that in case the statutory appeal is filed within the aforesaid period, the Appellate Authority shall entertain and decide the same on merit keeping in view the requirement as stipulated under Rule 22 of the Railway Servants (Discipline and Appeal) Rules.

2. By way of this Review Application, the applicant has contended that the applicant should not have been relegated to the statutory remedy in terms of provisions of Section 20 of the Administrative Tribunals Act which clearly provides that the Original Application shall not ordinarily be admitted unless the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievance. It is further contended that jurisdiction of the Tribunal is akin to the jurisdiction of the High Court under Article 226 and 227 of the Constitution, as such, provisions of Section 20 of the Administrative Tribunals Act are akin to alternative remedy provided under Article 226 and the applicant could not have been relegated to the alternative remedy as the applicant has also alleged violation of principles of natural justice as well as statutory provisions of the Railway Board. For that purpose, the

applicant has inter-alia pleaded that provisions of Rule 9(21) has not bee complied with and enquiry was conducted by the Enquiry Officer in the Vigilance Department. Further contention raised by the applicant is that since the applicant has also challenged the chargesheet against which there is no alternative remedy provided in the rules and subsequently this Tribunal permitted the applicant to amend the OA when penalty was imposed on him, as such, once the petition has been entertained by this Tribunal, the same could not have been thrown out on the ground of alternative remedy.

3. We have considered the submissions made by the applicant in the Review Application. As can be seen from the judgment dated 11th November, 2010 of which review is sought, this Tribunal has quoted the order dated 9.6.2010 by which the notices were issued whereby grievance of the applicant to the effect that chargesheet has not been issued by the appointing authority was noticed and it was prima-facie observed that Divisional Commercial Manager (DCM) was not prima-facie competent to issue the chargesheet and direction was given to the competent authority to pass final order on the enquiry report on the basis of observations made by this Tribunal. The findings recorded by this Tribunal to the effect that DCM could not have issued the chargesheet was based upon the unamended rules and when the factum regarding amendment carried out to the Schedule-II of the Railway Servant (Discipline and Appeal) Rules, 1968 as per the notification dated 10.3.2003 was brought to the notice of the

Tribunal, this Tribunal in para 6 and 7 has categorically held that DCM was competent to impose one of the major penalties, as such was competent to issue chargesheet in terms of second part of Rule 8 and the observations made by this Tribunal vide order dated 9.6.2010 have been complied with. Once this Tribunal rightly or wrongly has held that DCM was fully empowered to initiate major penalty proceedings against the applicant which was the basis for challenging the chargesheet in the OA that too at the belated stage when the Enquiry Officer has already submitted enquiry report, copy of which was also sent to the applicant alongwith show-cause notice and written brief was also submitted by the applicant on 3.8.2009 and the applicant approached after a period of about one years, the review is not appropriate remedy.

Similarly, the contention raised by the applicant that the applicant could not have been relegated to the statutory remedy of appeal as the alternative remedy provided under Article 226 and 227 of the Constitution is akin to statutory remedy available under Section 20 of the Administrative Tribunals Act, is also no ground to invoke the power of review as contemplated under Section 22(3)(f) of the AT Act which is akin/analogous to the power of Civil Court under Section 114 read with Order 47 Rule 1 CPC. No doubt, it is true that the Central Administrative Tribunal constituted under Article 223-A (~~a~~) of the Constitution of India is substitute of Hon'ble the High Court for the purpose of exercising jurisdiction on various type of writs so far service matters are concerned, but at the same time it cannot be lost sight of the fact that this Tribunal which is creation of the

statute has been conferred power, authority and jurisdiction in respect of service matters in terms of provisions contained in the Administrative Tribunals (AT) Act, 1985. Section 20 of the AT Act, which has been interpreted by the Constitution Bench of the Apex Court in the case of S.S.Rathore v. State of M.P., AIR 1990 SC 10, has categorically held that cause of action shall be taken to arise not from the date of the original order but on the date when the order of the higher authority is passed where a statutory remedy is provided entertaining the appeal or representation is made. The judgment rendered by the Constitution Bench under the AT Act under which Act this Tribunal has been given power, jurisidiction and authority to decide the matter cannot be ignored. This Tribunal in para 8 of the judgment after noticing the judgment of S.S.Rathore (supra) has categorically held that the OA cannot be entertained at this stage. Not only that, this Tribunal in para-11 after considering the judgment of the Apex Court in the case of L.K.Verma vs. HMT Ltd. and Anr., (2006) 2 SCC 269 on which reliance was placed by the applicant has categorically stated that the applicant has also not made out any case in the light of the law laid down by the Apex Court in L.K.Verma. At this stage, it will be useful to quote relevant portion of para 11, which thus reads:-

> "....
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> Thus, from the reading of Para 20 and 21 above, it is evident that the writ court may in exercise of its discretionary jurisdiction of judicial review entertain a matter where the court or the Tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. This is not a case of such nature, inasmuch

as, the Disciplinary Authority as well as the Appointing Authority has powers to issue chargesheet and pass punishment order. Further, neither the present case involve enforcement of fundamental right nor vires of the Act is under challenge. No doubt, the applicant has raised contention that the Disciplinary Authority has acted at the instance of the Vigilance Department and that the Enquiry Officer has not followed the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules and also that the Enquiry Officer and the Disciplinary Authority has not taken into consideration the written arguments/objections filed to the enquiry report while submitting the enquiry report and while passing the impugned order of punishment etc. but these are the matters which are required to be gone into in the statutory appeal where the Appellate Authority is bound to consider such plea of violation of principles of natural justice as well as quantum of punishment in terms of Provisions contained under Rule 22 of the Railway Servants (Discipline and Appeal) Rules. Thus, we are of the view that the applicant cannot take any assistance from the aforesaid judgment, more particularly, in the light of the provisions contained under Section 20 of the Administrative Tribunals Act, mandating exhausting of statutory remedy before filing of the OA, which provision has been considered by the Constitution Bench in the case of S.S.Rathore (supra) and held that without availing statutory remedy, the OA cannot be entertained. Further, it may be stated that in the case of L.K.Verma, the Apex Court was not required to consider implication of Section 20 of the Administrative Tribunals Act but the said finding has been recorded in the light of the provisions contained under Article 226 of the Constitution of India where there is no specific bar to entertain a writ petition on the ground of availability of statutory/alternative remedy.

4. Thus, in the light of the findings recorded above and once this Tribunal has categorically held that it is not a case of such nature where OA could be entertained at that stage and violation of principles of natural justice as pleaded as well as the quantum of punishment can also be gone into by the Appellate Authority in terms of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, the contention raised by the applicant in the Review Application for reviewing the judgment and to re-hear the matter

again on merit on the point on which this Tribunal has given findings is outside the scope of review. The Apex Court has categorically held that the erroneous order or decision cannot be corrected in the guise of power of review and further the matter cannot be heard on merit in the guise of power of review. As already stated above, by way of this Review Application, the applicant has tried to challenge the findings given by this Tribunal on merit whereby the applicant was relegated to statutory remedy of appeal. According to us, such a course is not permissible for the applicant in view of the settled law where the scope of review has been considered by the Apex Court. What is the scope of Review Petition and under what circumstance such power can be exercised was considered by the Hon'ble Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa, (1999) 9 SCC 596 and the Apex Court has held as under:

> "The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. 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 of fact or error apparent on the fact of 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 fact without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order XL VII Rule 1 CPC means a reason sufficiently analogous to those specified in the rule".

5. Further, the Apex Court in the case of State of West Bengal and Ors. vs. Kamal Sengupta and Anr., (2008) 2 SCC (L&S) 735 in para 35 has culled out 8 principles on the basis of the earlier judgments rendered by the Apex Court. At this stage it will be useful to quote para-35 of the judgment, which thus reads:-

> "35. The principle which can be culled out from the abovenoted judgment are:-
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> (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
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> (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule1 and nor otherwise.
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> (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds.
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> (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
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> (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
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> (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
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> (vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
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> (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

6. Thus, sina-qua-non for exercising the power of review is that order/judgment should suffer from any patent mistake or an error

apparent so as to warrant its review under Section 22(3)(f) of the AT Act. It has specifically been mentioned in para 35 of the judgment that an erroneous order/decision cannot be corrected in the guise of exercise of power of review. Thus, in view of the settled law as reproduced above, it is not permissible for the applicant to question the legality and validity of the judgment of this Tribunal on merit. In case the judgment of this Tribunal is wrong, the Review Applicant is not without remedy and, in that eventuality, it is open for the applicant to challenge the judgment of this Tribunal in higher forum.

7. That apart, it may be stated that the applicant has been relegated to the statutory remedy by way of appeal. In case the appeal or statutory remedy is decided against the applicant, it is always open for him to approach this Tribunal thereby raising all the contentions which are available to him under law. Thus, no prejudice has been caused to the applicant in case the applicant has been relegated to the statutory remedy in terms of the provisions contained under Section 20 of the AT Act and in the light of the law laid down by the Apex Court in the case of S.S.Rathore (supra).

8. At the sake of repetition, it may be stated that the applicant has not made any grievance regarding allegation leveled in the chargesheet and he participated in the enquiry without any protest. Not only that, copy of the enquiry report was also sent to the applicant along with show-cause notice. The applicant kept mum and approached this Tribunal by filing the aforesaid OA after a lapse of almost one year

when the enquiry proceedings against he applicant completed and no final order was passed by the Disciplinary Authority. Under such circumstances, the only course permissible in law was to hold enquiry by appointing Enquiry Officer to ascertain the truth of the charges. Had the applicant made any grievance regarding appointment of person from vigilance department as the Enquiry Officer and not following the procedure as contemplated under Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, it was open for the applicant to approach this Tribunal at the appropriate stage.

9. Be that as it may, the observations hereinabove are being made as the applicant has contended in the Review Application that against the chargsheet there was no statutory or alternative remedy available and once he has challenged the chargesheet on the ground that it has been issued without jurisdiction, the matter could not have been relegated to the statutory forum especially when this Tribunal after taking note of the amended provisions in para 6 and 7 has categorically held that the chargesheet has been issued to the applicant by the competent authority. This Tribunal in para-10 of the judgment has observed that simply because the applicant was permitted to carry out amendment and notices were issued, the applicant can be relegated to the alternative/statutory remedy in the light of the decision of the Apex Court in the case of State of U.P. ad Anr. vs. U.P.Rajay Khanij Vikas Nigam, JT 2008 (6) SC

489. Thus, the applicant has not made out a case for reviewing the judgment.

10. For the foregoing reasons, the Review Application is bereft of merit, which is accordingly dismissed by circulation.

(ANIL KUMAR)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

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