

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

RA No.15/1999 (OA No.491/1994)

Date of order: 30.03.2000

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The D.R.M., Western Railway, Division Office, Kota.
3. The Station Master, Jajan Patti, Western Railway.

.. Review Petitioners

Versus

Baiju S/o Shri Nathu, aged about 34 years at present posted as Local Safaiwala at Railway Station Jajan Patti, Western Railway, Kota Division.

Respondent-applicant.

Per Hon'ble Mr. N.P. Nawani, Administrative Member

This Review Application has been filed to recall and review the order of this Tribunal dated 23.7.1999 passed in OA No.491/1994, Baiju v. Union of India and ors.

2. Vide order dated 23.7.1999, this Tribunal had disposed of the OA with a direction to respondents to re-engage the applicant on the post of Safaiwala and to consider grant of temporary status to the applicant as per the rules.
3. In view of the submissions made in the Misc. Application No.377/99, we condone the delay in filing this Review Petition.
4. We have carefully perused the averments made in this Review Petition and have also gone through the order dated 23.7.1999 delivered by this Tribunal in OA No.491/94.

5. The main contention of the Review Petitioners is that reply to the OA could not be filed due to negligence on the part of the Clerk concerned as the case file was not traceable. Action is separately being taken against the defaulting Clerk. On examination of the matter, it was found that despite exercising due diligence, certain vital important facts which could have bearing on the outcome of the OA could not be brought to the notice of the Hon'ble Tribunal. It has been contended that the respondent-applicant was not a Casual Safaiwala but was a petty contractor whom the work was used to be given by the Local Railways on contract basis and that he was paid on the basis of the assessment of work done by him. It has also been stated that the respondent-applicant was not engaged as Casual Safaiwala and no such category or designation as Local safaiwala against which engagement or appointment has ever been made or ordered by the administration of Divisional Railway Manager, Western Railway, Kota. However, in the past sometime work was given on contract basis to clean some area on fixed rate. It has also been stated that the local safaiwalas who were working in different railway stations in Kota Division were all dis-engaged vide office letter dated 16.8.1994. The Review Petitioners have, therefore, prayed that the order dated 23.7.1999 may be reviewed and the OA may be re-heard after providing an opportunity to the Review Petitioners to file their reply to the OA.

6. Section 22(3) of the Administrative Tribunals Act, 1985 confers on an Administrative Tribunal discharging the functions under the Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect inter alia of reviewing its decisions. Sec. 22(3) is as under:

"Sec.22(3)(f):

A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908),

(5)

while trying a suit, in respect of the following matter, namely  
(f) "reviewing its decisions;"

7. A Civil Court's power to review its own decision under the Code of Civil Procedure is contained in Order 47 Rule 1; Order 47 Rule 1 provides as follows:

"Order 47 Rule 1:

Application for review of judgment:

(i) any person considering himself aggrieved:  
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.  
(b) by a decree or order from which no appeal is allowed, or  
(c) by a decision on reference from a Court of small Causes and who, from 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 decree was passed or order made, or in account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."

8. On the basis of the above preposition of law, it is clear that power of review available to the Administrative Tribunal is similar to power given to civil court under Order 47 Rule 1 of Civil Procedure Code, therefore, any person who consider 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(a) on the ground that there is an error apparent on the face of the record or from 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 decree or order was passed but it has now come to his knowledge.

9. It appears that notices of the OA were served on the respondents as long back as 8.11.1994 and the respondents failed to file their reply till 23.7.1999 when the case was heard and disposed of. It cannot, therefore, be said that the official respondents in the OA had exercised due diligence and care in keeping track of various adjournments given for filing reply. [In any case, the records of the official respondents themselves do not bare out the fact that the applicant was paid as contractor. Even in Review Petition, it has been mentioned that the applicant was being paid a fixed rate of Rs. 300 per month as per contract. A contract is not generally paid a fixed amount every month and, therefore, it is quite clear that the applicant was working as Casual Labour behind the veil of the so called contract. It has also been denied in the Review Petition that the applicant was paid salary through S/Bills regularly years together for working days as has been mentioned in the letter of Station Master, Western Railway, Jajanpatti in his letter dated 15.4.1987 but how can the facts and details of that letter annexed at Ann.A3 in the OA be ignored. It also appears from the details at Ann.A4 to the OA that the applicants case for temporary status was forwarded by the Station Master, Western Railway, Jajanpatti to the Sr. DS (E), Kota. The claim of the official respondents in this Review Application that the applicant in the OA was a contractor does not, therefore, appear to be a discovery of new and important evidence which was not within the knowledge of the official respondents when the Tribunal had disposed of the OA vide its order dated 23.7.1999.] In 1992(2) SLJ (CAT) 298 Rajesh Pal v. Union of India, the Principal Bench of this Tribunal had held that the scope of review was very limited and unless there was discovery of new and important evidence which

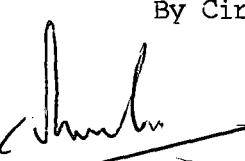
should not have been within the knowledge of a party when order was made or there was a mistake or error apparent, the review of an order made by the Tribunal should not be undertaken.

10. It also appears that what the Review Petitioners are claiming in this Review Petition is that the Tribunal should re-appreciate the facts and material on record, including the letter and statement sent by the Station Master to the higher authorities. This is beyond the purview of this Tribunal while exercising the powers of review conferred upon it under the law. It has been held by Hon'ble the Supreme Court in the case of Smt. Deera Bhanja v. Nirmal Kumari, AIR 1995 SC 455 that reappreciating facts/law amounts to overstepping the jurisdiction conferred upon the Courts/Tribunal while reviewing its own decisions.

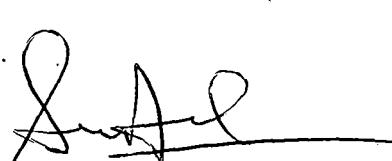
10. There is neither any discovery of new and important facts which had not been within the knowledge of the official respondents in the OA nor is there any mistake or error apparent on the basis of which the order dated 23.7.1999 passed by this Tribunal can be reviewed.

11. In view of above facts and circumstances of this case, this Review Application is dismissed having no merits.

By Circulation.

  
(N.P. NAWANI)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member