

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 04.07.2007

(15)

RA No.16/95 (OA No.832/92)

Vijay Singh Rajput S/o Shri Amar Singh at present working on the post of Steno-II under Assistant Works Manager (Machinery and Plant) Carriage and Wagon Shop, Western Railway, Ajmer.

Review Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Personnel Officer, Western Railway, Churchgate, Mumbai.
3. Additional Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
4. Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. Anupam Agarwal, Proxy counsel to Mr. Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

ORDER

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

In this Review Application filed under Section 22 of the Administrative Tribunals Act, 1985, the applicant seeks review of the order dated 16.12.1994 in OA No.832/1992 and prays that the said OA be accepted, quashing the Annexures A2, A3 and A4 therein dated 18.5.1989, 21.8.1989 and 28.5.1990 respectively.

2. It has been averred in the Review Application that the Disciplinary Authority had come to the conclusion that the Charge No.I is not proved and punished the review applicant on Charge No.II but the Appellate Authority has punished him on the basis of Charge No.I, holding it as having been proved, reversing the findings of the Disciplinary Authority. Further, that this Tribunal in the impugned order had held that Charge No.I has been rightly held as more or less not established by the Appellate Authority, who reduced the penalty and also held that Charge No.II of making a false declaration is clearly and correctly established, which is contrary to the findings of the Appellate Authority. It has also been contended that there was no allegation that the applicant had obtained the post of Stenographer by giving a false



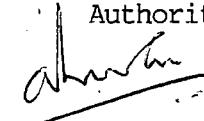
declaration and the very wording of the relevant question will show this but this aspect was not considered by the Tribunal. Thus, a mistake apparent on the fact of judgment is established which needs to be, therefore, reviewed.

3. In their reply, the respondents have opposed the averments of the review applicant and asserted that the Review Application is not even maintainable as it seeks reappreciation of the findings recorded by the Tribunal. The Charge No.II is clearly proved, as would be clear from the bare perusal of material on record and, therefore, findings of the Tribunal cannot be said to be without any basis. The findings recorded by the Disciplinary Authority and not by the Appellate Authority has been taken into consideration to arrive at a conclusion that the said finding is proper after evolving (sic evaluation) the material on record and it was not at all necessary for the Tribunal to make a mention of all the facts and documents because the Tribunal is not sitting as a Court of Appeal to reappreciate the evidence as well as the findings. The review application is, therefore, based on incorrect and erroneous interpretation of facts and law.

4. We have heard the learned counsel for the parties and perused the entire material on record.

5. In addition to reiterating the averments made in the Review Application, the learned counsel for the review applicant argued that the Review Application falls well within the scope of review and cited the cases of Smt. Meera Bhanja v. Nirmal Kumari, AIR 1995 SC 455; Capt. Satish Sharma reported in 1999 (6) SCC 667 and the case of Ajit Kumar Rath v. State of Orissa and Ors. reported in JT 1999 (8) SC 578. The learned counsel for the respondents also cited the case of Ajit Kumar Rath to support his arguments that the scope of review is to correct a patent error and does not permit fresh hearing or arguments even when an erroneous view has been taken by the Tribunal earlier in which case, appeal to a higher Court is the remedy and not the review.

6. We have given our careful consideration to the rival contentions. We note that the averments of the review-applicant that the Disciplinary Authority had come to the conclusion that Charge No.I was not proved does not seem to be correct. On going through the order of the Disciplinary Authority, we find that he has concluded that Charge No.I has been proved on preponderance of probability and that Charge No.II has been proved beyond doubt. The penalty imposed by the Disciplinary Authority was, therefore, based on establishment of both the charges. The

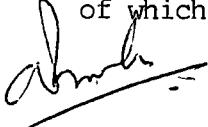


Appellate Authority has, however, held that Charge No.I is based only on possibilities and no written or reliable evidence was there but the delinquent official cannot be exonerated fully. With regard to Charge No.II, the Appellate Authority has remarked that it was only mistake and not lack of truthfulness but he has not held specifically that Charge No.II is not proved. He then proceeded to state that he is taking a lenient view and reduced the penalty. It, therefore, cannot be said that the Tribunal, in its order dated 16.12.1994 in OA No.832/1992 had made any error apparent or omitted to take into consideration any fact which was not placed before it, which otherwise could have been made available by the concerned party with due diligence.

7. It is well settled legal position that while disposing of a Review Application, the Tribunal cannot start a fresh hearing or undertake a fresh appreciation of the facts and legal position. What the review applicant is really claiming through this Review Application is that this Tribunal should reappreciate the facts and material on record. This is beyond the purview of this Tribunal while exercising the powers of the review conferred upon it under the law. It has been held by Hon'ble the Supreme Court in the case of Smt. Meera Bhanja (supra) that reappreciating facts/law amounts to overstepping the jurisdiction conferred upon the Courts/Tribunals while reviewing its own decisions. In the present application also, the applicant is trying to claim reappreciation of the facts and material on record which is decidedly beyond the power of review conferred upon the Tribunal and as held by Hon'ble the Supreme Court.

8. It has been observed by the Hon'ble Supreme Court in a recent judgment in Ajit Kumar Rath (supra) that 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 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.

9. In the instant case, on the perusal of the order delivered and also the record as a whole, we are of the considered opinion that there is no error apparent on the face of the record and no new important fact or evidence has come into the notice of this Tribunal on the basis of which the order passed by the Tribunal can be reviewed.



10. The Review Application is, accordingly, dismissed.



(N.P.NAWANI)

Adm. Member



(B.S.RAIKOTE)

Vice Chairman