

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

REVIEW APPLICATION NO. 291/00023/2014

IN

ORIGINAL APPLICATION No. 158/2010

DATE OF ORDER :

12-2-2015

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

1. Union of India through the Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, North Western Railway, Head Quarter, Jagatpura, Jaipur.
3. FA & CAO, North Western Railway, Head Quarter, Jagatpura, Jaipur.

... Applicants

Versus

1. Raju Lal Meena aged about 49 years son of Shri Gangaram meena, resident of Pabdi Bhawan, Hasanpura, Khatipura, Jaipur. At present posted as Accounts Assistant in the office of FA & CAO, North Western Railway, Head Quarter.
2. Manoj Kumar Sharma son of Shri B.D. Sharma, aged about 44 years, resident of 185/261, Pratap Nagar, Sanganer, Jaipur. At present posted as Jr. Accounts Assistant in the office of FA & CAO, North Western Railway, Head Quarter.

... Respondents

ORDER BY CIRCULATION

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The OA No. 158/2010 was filed S/Shri Raju Lal Meena and Manoj Kumar Sharma, which was decided by this Tribunal vide order dated 10.04.2014. Para 18 of the order is quoted below:-

"18. Therefore, we direct the respondents to consider the case of the applicants to grant the benefit of MACP Scheme in accordance with the provisions of OM dated 01.11.2010 and OM dated 04.10.2012 of the DOPT within

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a period of three months from the date of receipt of a copy of this order."

2. Being aggrieved by this order of the Tribunal, respondents in the OA that is Union of India & Others filed a DB Civil Writ Petition No. 10675/2014 before the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur. The Union of India argued before the Hon'ble High Court that as per a further clarification dated 29.11.2013 of OM dated 04.10.2012, the respondent applicant was not entitled to claim the benefit of MACP in terms of Circular dated 01.11.2010 read with 04.10.2012. The Hon'ble High Court observed that as the said clarification dated 29.11.2013 was not made available before the Tribunal for consideration, it will not be proper for this Court to examine the fact of the said clarification and, therefore, the liberty was granted to the petitioner to file Review Petition before the Tribunal to examine the fact of clarification dated 29.11.2013, which was made in further of OM dated 04.10.2012. The Hon'ble High Court in its order dated 30.10.2014 observed that :-

"it will be open for the petitioner to make a request to the learned Tribunal to consider the review petition also if preferred for passing appropriate orders while examining the Contempt Petition.

Consequently, the writ petition stands dismissed with liberty as indicated above."

3. Now in pursuance of the orders passed by the Hon'ble High Court, the respondents in the OA that is Union of India & Others have filed this Review Petition. In the Review Petition,

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they have stated that the petitioner are filing Review Petition only with regard to the impugned order dated 10.04.2014 only to the extent of the directions giving in regard to MACP Scheme which is only restricted to Raju Lal Meena. Shri Manoj Kumar Sharma has been impleaded as proforma party in the Review Petition. The main ground on which liberty has been given to the petitioner in the Writ Petition before the Hon'ble High Court is the non availability of further clarification dated 29.11.2013 before the Tribunal. The said clarification has been annexed at Annexure RP/3. We have carefully perused the clarification, which is quoted below:-

"Government of India
Department of Personnel & Training
Establishment (D)

Dy.No.94936/188/Dir(E-1)/13
PC-V/2009/ACP/2(pt.3)

Reference notes on pre-page.

2. Specific confirmation sought by the Ministry of Railways that in those cases of unilateral transfer on own volition where employee has been allowed the benefit of pay protection, the promotion earned in previous organization/office is to be ignored.

3. In this regard it may confirmed that clarification offered by this Department vide OM dated 04.10.2012 ignoring provision for grant of MACPS benefits is applicable to employees who have been given transfer on own request duly reverting them to the lower grade before being relieved i.e. in cases where the employees do not get the pay protection benefit."

4. From this note, it is clear that this advice/clarification has been given to the Ministry of Railways on their file but the Ministry of Railways have not placed on record as on which point reference was made to the DOPT.

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5. Moreover, this circular is dated 29.11.2013 when the OA No. 158/2010 was pending consideration before the Tribunal. This OA was listed before the Tribunal on 04.12.2013, 13.12.2013, 08.01.2014, 30.01.2014, 04.02.2014, 26.02.2014, 03.03.2014, 04.03.2014, 06.03.2014, 19.03.2014, 25.03.2014, 02.04.2014, 03.04.2014 and 04.04.2014 when the case was finally heard and order was reserved. This shows that Union of India had enough opportunity to bring this clarification to the notice of the Tribunal before the case was heard but the respondents in the OA that is Union of India & Others did not bother to bring this clarification to the notice of the Tribunal and now they are trying to re-open this issue in the garb of clarification issued by the DOPT dated 29.11.2013, which is not permissible under the provision of Review.

6. The Hon'ble Apex Court in the case of **Smt. Meera Bhanja vs. Nirmal Kumari**, AIR 1995 SC 455, observed that reappreciating facts/law amounts to overstepping the jurisdiction conferred upon the Courts/Tribunals while reviewing its own decision. In the present application also, the applicant is trying to claim reappreciation of the facts/law which is beyond the power of review conferred upon the Tribunal as held by Hon'ble Supreme Court.

7. The Hon'ble Apex Court has categorically held that the matter cannot be heard on merit in the guise of power of review and further if the order or decision is wrong, the same

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cannot be corrected in the guise of power of review. 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 wherein 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 face 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".

8. From the perusal of the above judgment of the Hon'ble Supreme Court, it is clear that the power of review 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 at the time when the order was made. A review cannot be claimed or asked for merely for a fresh hearing or argument or correction of an erroneous view taken earlier. 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

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needed for establishing it. In the present Review Petition, the clarification issued by the DOPT is dated 29.11.2013 whereas thereafter the OA was listed before the Tribunal on 14 (fourteen) occasions as stated in Para No. 5 of this order. Thus it cannot be said that the applicants of the present Review Application that is Union of India & Others could not have produced the said clarification issued by the DOPT before the OA was finally heard on 04.04.2014 even after the exercise of due diligence. Needless to say that this clarification is on the file of the Railway Board, therefore, it cannot be said that this was not within the knowledge of the respondents. The Union of India in the Review Petition has not stated as to why this clarification could not be produced by them at the time when the order was made in the OA. In the Ground (C) of the Review Petition, it has been stated that the Review Petition is being filed because the Hon'ble Tribunal has wrongly applied Memorandum dated 01.11.2010 and 04.10.2012. Besides other grounds, they have also taken the ground of clarification dated 29.10.2013 issued by the DOPT but they have not stated why this clarification was not brought to the notice of the Tribunal during the hearing of OA. From the perusal of other grounds also, it is clear that Union of India is trying to re-open the issue on merits, which has already been decided by the Tribunal, which is not permissible under the law on Review.

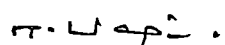
9. The Central Administrative Tribunal, Principal Bench, New Delhi in Para No. 12 in the case of CT. Abdul Sattar vs. GNCT of Delhi & Others, AISLJ 2014 (2) CAT 94, has held as under:-

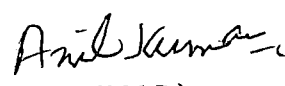
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"12. Further, in Union of India v. Tarit Ranjan Das, 2004(1) SLJ 424 SC = 2004 SCC (L&S) 160 and in Subhash v. State of Maharashtra and Another, AIR 2002 (SC 2537, it was categorically held by the Hon'ble Apex Court that in the garb of a Review Application, the Tribunal cannot re-examine the issue, and a review is allowable only if the error pointed out is plain and apparent, on the face of the record. We do not find that the review applicant before us has been able to point out any error apparent on the face of the record. We are bound by the Apex Court judgments cited above."

10. In the present Review Application, we do not find any patent error of law or facts in the order dated 10.04.2014 passed in the OA No. 158/2010 (Raju Lal Meena & Another vs. Union of India & Others). Therefore, in view of the law laid down by the Hon'ble Apex Court, we find no merit in this Review Application and the same is accordingly dismissed by circulation.


(M. NAGARAJAN)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

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