

REVIEW APPLICATION No. 291/00004/2016
(IN OA NO.291/00325/2015)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**REVIEW APPLICATION No. 291/00004/2016
(IN OA NO.291/00325/2016)**

Date of Order: 08.06.2016

Gangaram Meena S/o Shri Meetha Lal Meena, aged about 48 years, R/o C/o Brij Mohan Gupta, Near Agarwal Seva Sadan, New Mandi Road, Dausa and presently working as Senior Section Engineer(P.Way), under Deputy Chief Engineer (Construction), North Western Railway, Dausa.

.....Applicant
(By Advocate Mr. Amit Mathur)

VERSUS

1. Union of India, through General Manager, North Western Zone, North-Western Railway, Head Quarter Office, Near Jawahar Circle, Jagatpura, Jaipur.
2. Chief Administrative Officer (Construction), North Western Zone, North Western Railway, Head Quarter Office, Near Jawahar Circle, Jagatpura, Jaipur.
3. Chief Engineer (Construction), H.Q. North Western Zone, North Western Railway, Head Quarter Office, Near Jawahar Circle, Jagatpura, Jaipur.
4. Deputy Chief Engineer (Construction), North Western Railway, Near Railway Station, Dausa.

.....Respondents

**ORDER
(By Circulation)**

This Review Application No. 291/00004/2016 has been filed on behalf of applicant for review of order of this Tribunal dated 02.02.2016 (Annexure RA/1) in OA No. 291/00325/2015.

2. In the aforesaid OA, the following prayer had been made:

(i) That the respondents may be directed to allow the applicant to work at Dausa by quashing relieving order dated 30.05.2014 (Annexure A/1) with the order dated

06.12.2013 (Annexure A/17) with all consequential benefits.

- (ii) That the respondents be further directed to give similar treatment in connection with transfer/posting as allowed to his coworkers like Shri Shankar Lal Meena, S.C. Gupta and Brij Kishore Meena and to allow the applicant to work at Dausa in construction and also to follow instructions for posting/transfer in the cases of SC/ST category employees with all consequential benefits.
- (iii) That the respondents be further directed to release pay and allowances of the applicant w.e.f. 01.06.2014 treating him as on duty, as applicant till date not relieved as per procedure by handing over charge and reporting duties day to day before the respondent No. 4.
- (iv) That the respondent be further directed to make payment of benefits like bonus and MACP granted by them along with interest at market rate.
- (v) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (vi) That the costs of this application may be awarded.

3. After hearing and due consideration of the matter, the Tribunal decided the OA vide order dated 02.02.2016 as under :

"Considered the aforesaid contentions and perused the records. It appears that after being declared surplus vide order dated 06.04.2013 (Annexure A/13), the applicant was transferred to his parent Division at Jodhpur vide order dated 06.12.2013 (Annexure A/17). On his representation, he was retained up to 31.03.2014 vide order dated 03/06.01.2014 (Annexure A/20). Subsequently, he was relieved vide order dated 30.05.2014 (Annexure A/1). One of the main contentions of the counsel for the applicant is that the applicant was relieved without being allowed to hand over the charge which is the violation of the policy of transfer and posting. However, it is seen that as far as handing over of the charge is concerned, as brought out by the counsel for respondents, that when the applicant was transferred earlier to Sirohi, the Committee had taken over the charge of certain documents and as brought out in the reply, the applicant was not looking after store work and there was

no question of having any stock with him. Therefore, the argument of the counsel for applicant that he was not allowed to hand over the charge before relieving does not carry much conviction. As far as the application of Circular RBE 36/1985 pertaining to transfer of SC/ST employees (Annexure A/26) is concerned , it is noted that order dated 06.12.2013 (Annexure A/17) is actually transfer on repatriation to the parent Division at Jodhpur and as the construction work at Dausa has come to close, the applicant was declared surplus (vide order dated 06.04.2013 [Annexure A/13] and the same has not been challenged) and he has only been transferred back to his parent Division, no case of violation of the circular is made out. It is also seen that there appears to be no discrimination against the applicant, as in the case of Shri Shankar Lal Meena, as brought out by the respondents, the latter applied for being adjusted and was accordingly, accommodated in Ajmer. However, there is nothing on record to indicate that the applicant made a similar request for adjustment in any other suitable place and further he also did not report for duty at Jodhpur, his parent Division even after being relieved vide order dated 30.5.2014 (Annexure A/1). The transfer (Annexure A/17) and relieving order (Annexure A/1) thus cannot be said to be discriminatory or illegal and there is no justifiable grounds to set them aside.

In view of the above position and analysis, there appear no grounds to grant any relief as prayed for by the applicant and accordingly the OA is dismissed with no order as to costs".

4. The applicant has filed the OA mainly on the following grounds:

- (i) That while passing the order dated 02.02.2016, the learned tribunal with all respect has not at all considered the health condition of the applicant's wife.
- (ii) The Government of India on 06.06.2014 (Annexure RA/2) has framed the policy for transfer and posting of the dependants of the Government servant. In the policy it has been considered that such persons who are having mental disorder, they required an environment to develop and they cannot adjust themselves in new environment. The

Government employee who is caretaker of such person should be exempted from regular transfer and posting.

- (iii) The impugned order has been passed on the basis of false averments made by the respondents in reply. That the respondents claim that no work is left in construction organization was incorrect.
- (iv) When the sanction cadre strength has been increased in construction organization the submission that work is over and no one can be adjusted is incorrect submission.
- (v) After relieving the applicant ten more people have been given posting in the construction organization at Dausa (Annexure RA/3).
- (vii) The order dated 02.02.2016 further deserves to be reviewed for the reason that the similarly situated person Shri S.C. Gupta and Shri Brij Kishore Meena has been allowed to adjust at same place.
- (viii) In the OA it was stated that the applicant belongs to ST category and there are various Office Memorandums issued by the Railway Board to allow the member of this community at their native place where they are working or nearby place. The said provision has been violated by the respondents. No finding has been given by the learned Tribunal on this issue.
- (ix) That the respondents in their reply to the original application have stated that the work handing over of the applicant has already taken place at the time when the applicant had been

transferred to Sirohi. It was factually incorrect statement made by the respondents.

(x) The Ld. Tribunal while passing the order with respect has committed an error of facts and law by accepting the arguments of the respondents that the applicant has to be repatriated to the parent division i.e. Jodhpur. It is submitted that the applicant since his appointment remained posted in Construction Organization and never performed duties in Jodhpur Division. The construction organization itself is an independent division. There is no question of repatriation to the Jodhpur Division as in the construction organization Dausa itself many new persons have been given posting from other divisions.

(xi) The policy of handing over and taking over the charges is an important policy. The Learned Tribunal while passing the order did not appreciate the reasons behind such policies. For the shortage of stocks and materials any time charge sheet can be issued and even the pension benefits can be withheld as has been done by the respondents with three employees in Jodhpur office.

(xii) As per Master Circular No. 24 whenever any curtailment in a cadre takes place and railway servant has to be transferred, as a general rule the junior most employee should be transferred first. The applicant has been repatriated in the year 2013. At the time of repatriation he was the senior most JE. When applicant was promoted as SSE a communication dated 03.04.2014 (Annexure A/23) has been sent to give sanction of posting to the applicant in

Construction Organization at Dausa. But it was denied vide communication dated 28.05.2014 (Annexure RA/8) by saying that fund is not available. But immediately thereafter they posted M.L. Meena to Dausa vide order dated 18.06.2014 (Annexure RA/9).

(xiii) In the original application four prayers were made by the applicant that including the grant of benefit of MACP, grant of salary for the intervening period and considering the claim of the applicant under the policy for posting/transfer of an SC/ST employee and benefit given by the respondents to other similarly situated persons. These issues have not all been taken into consideration by the learned tribunal while adjudicating the controversy.

5. Considered the points raised in the RA and perused the records of the RA and the OA. As far as the DOP&T OM dated 06.06.2014 (Annexure RA/2) placed with the RA is concerned, the same was not filed with the OA and in any case it relates to transfer of employee who are caregiver of a disabled child and in this case the illness is of the wife of the applicant.

6. Further the applicant never challenged the order date 06.04.2013 (Annexure A/13) vide which he was declared surplus. Some of the other grounds raised in the OA also appear to be subsequent developments and a number of Annexure/documents now annexed with RA were not brought on record by the applicant in the OA.



7. In view of the above position it appears that by way of this Review Application, the applicant has actually challenged the legality of the order of the Tribunal on merits, rather than on the basis of any errors apparent on the face of record. In my considered view, deciding these by way of review shall, in effect, touch the merit of the case, which does not come within the purview of Order 47 Rule 1 CPC.

8. The Hon'ble Apex Court in Ajit Kumar Rath V. State of Orissa and Others- (1999) 9 SCC 596 has held that power of review available to the Tribunal under Section 22(3)(f) is not absolute and is the same as given to a Court under S.114 read with Order 47 Rule 1 of CPC. It has further been held that the scope of review is limited to correction of a patent error of law or fact which stares in the face, without any elaborate argument being needed to establish it and that exercise of power of review on a ground other than those set out in order 47 Rule 1 amounts to abuse of liberty granted to the Tribunal and hence review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier.

In view of the above analysis as, the scope of review is very limited, there appears no need to issue notices on the Review Application and the same is dismissed by circulation.


(Ms. Meenakshi Hooja)
Administrative Member