IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20.07.2007

RA No.18/2000 (OA No.245/93)

1. Gheesu Lal S/o Shri Sohan Lal, aged about 56 years R/o Sochan Wada Kayasthan Mohalla, Purani Mandi, Ajmer

2. Shyam Lal S/o Shri Manya, aged about 31 years, R/o Mayo Link Road, Gahlota Ki Doongari, Ajmer.

.. Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.

2. Chief Works Manager (E), Loco Workshop, Western Railway, Ajmer.

.. Respondents

O R D E R

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

This Review Application has been filed to recall/review the order dated 12.4.2000 passed in OA No.245/93, Gheesu Lal and Anr. v. Union of India and Anr.

2. This Review Application has been filed after the expiry of 30 days but considering the submissions made in the MA No. 213/2000 for condonation of delay, the delay is condoned and the Review Application is considered on merits.

3. Vide order dated 12.4.2000, this Tribunal had dismissed the said OA filed by the applicants with no order as to costs.

4. We have perused the averments made in this Review Application and have also carefully gone through the decision rendered by this Tribunal on 12.4.2000 in OA No. 245/93.

5. The contentions put forward in this Review Application are essentially that Rule 188 of the Indian Railway Establishment Manual (for short IREM) was relied upon by the applicants to establish that their appointment to the post of Record Sorter was regular and, therefore, they could not have been subjected to further test and on being failed, could not have been reverted to the lower post and the Tribunal had not considered this argument while passing the judgment. It has also been contended in this Review Application that even if the circular No.E (MD) 890/10 vol.II dated 3.8.1989 (Ann.A7 in the OA) was for another Department of the Railways, it amounted to relaxation of conditions of service authorised by Rule 114 of the IREM and, therefore, denial of such relaxation to the applicants was discriminatory.

6. 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:
> (1) 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 deligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on 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."

7. In the present case, the Tribunal had passed the order dated 12.4.2000 after consideration of the records and hearing the learned counsel for the parties, as will be evident from para 4 of the order. It was held that the applicants were promoted to the post of Record Sorter purely on ad-hoc basis and while appearing in the selection test

for regular promotion remained unsuccessful on both the occasions. Non-mention of para 188 of IREM in the order was of no consequence to the result of the OA since para 188 of IREM also provides for is that "after holding such written and/or practical test, as may be considered necessary". Therefore, there is no glaring omission. As regards the other contentions regarding applicability of circular dated 3.8.1989 (Ann.A7) this has been discussed in the order and it has been found that the order (not any circular) dated 3.8.1989 "has been issued in respect of certain employees in another Department and in the absence of its background and Recruitment Rules. etc., this order by itself does not enable us to quash the reversion order in this case...." It has been mentioned in the Review Application that Rule 114 of the IREM apprised (sic, empowers) the railway administration to relax the conditions of service in respect of suitable persons but the said rule was not mentioned in the pleadings and, in any case, Rule 114 of the IREM (Vol.I) appears to be regarding re-employment. Be that as it may be, this Tribunal had considered the order dated 3.8.1989 and had found that it is of no help to the applicants.

8. What the 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 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. In the present application also the applicants are 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.

9. It has been observed by Hon'ble the Supreme Court in a recent judgment Ajit Kumar Rath v. State of Orissa and Ors., JT 1999 (8) SC 578 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 or fact 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.

10. In the instant case, on the prsual of the order under review 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 reviwed.

11. In view of the above, and the facts and circumstances of this case, we do not find any error apparent on the face of the record to review the impugned order and, therefore, there is no basis to review the above order.

12. We, therefore, dismiss this Review Application having no merits.

(N.P.NAWANI)
Adm. Member

(B.S.RAIKOTE)
Vice Chairman