

2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI -5.

O.A. NO.
T.A. No.

Review Application No.9 of 1995(In O.A.194/94)

DATE OF DECISION 2.5.95

Shri K.C.Maitra

PETITIONER(S)

Shri R.N.Dhar

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri B.K.Sharma.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (A)

1. Whether Reposters of local papers may be allowed to see the Judgment? ✓ ~~Yes~~
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ? } No
4. Whether the Judgment is to be circulated to the other Benches ?

M.G. Chaudhary
Judgment delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Review Application No.9 of 1995 (In O.A.194/94)

Date of Order : This the 2nd Day of May, 1995.

Justice Shri M.G.Chaudhari, Vice-Chairman.

Shri G.L.Sanglyine, Member (Administrative)

Shri K.C.Maitra . . . Applicant

By Advocate Shri R.N.Dhar.

- Versus -

Union of India & Ors. . . . Respondents.

By Advocate Shri B.K.Sharma.

(For Admission)

O R D E R

CHAUDHARI J.(V.C)

Heard Mr R.N.Dhar at length. There is no ground to entertain this Review Application. Mr Dhar submits that there are 3 errors, ^{face of} apparent on the record in passing the judgment dated 8.2.95 and therefore that calls for review. We shall deal with the submissions in brief.

2. Under Section 22(3)(h) the Tribunal exercises same powers as are vested in a civil code under the Code of Civil Procedure in reviewing its decision. Rule 17 of the C.A.T.Procedure Rules 1987 lays down the procedure for filing the review application. Sub-rule 5 lays down that no application for review shall be entertained unless it is supported by a duly sworn affidavit for the purposes mentioned in that sub-rule. The present application is not supported by a sworn affidavit. It is merely verified by the applicant. On that ground ^{itself} the application cannot be entertained.

hick

3. However, the applicant has time and again brought the same matter before this Tribunal and the present review application is one such instance. We are not inclined to encourage unnecessary litigation and therefore we have heard Mr Dhar on merits of the present application. The application runs into 27 pages. We request the learned counsel to formulate the grounds on which he seeks the review to be maintainable.

4. First ground urged by Mr Dhar is that the Circular of the General Manager, N.F.Railway dated 25.6.90 bearing No.Z/265/AGM was not within the knowledge of the applicant and if that circular could be considered by the Tribunal it would have made material difference in its view expressed in the judgment on the O.A. dated 8.2.95 and thus it is an error apparent on the face of the record. In para 4(d) of the application it is stated that with due diligence the petitioner could not procure and produce the said circular at the time of hearing. It ^{has} ~~is~~ however, not been stated as to under what circumstances the applicant came to know about the circular after the judgment was passed. The circular being of 1990 it is not such as could not have been known on a diligent enquiry ~~to be~~ made with the Railways. In the absence of it being pointed out as to what efforts were made earlier to collect all the relevant materials and under what circumstances this circular came to the knowledge of the applicant, ^{it} cannot be regarded as discovery of a new material ^{piece} of evidence which was not within the knowledge of the applicant despite exercising due diligence. Moreover, the copy of the circular which is produced is not a copy of any published record or a true copy authenticated

5

by any authority. It would not be correct to rely on such a copy merely because somebody says that he has seen such a circular to exist. The said circular refers only to the subject of redelegation of powers and while delegating certain powers the subject of DAR cases has been retained by the General Manager with him. That was the position in 1990 and the applicant has not ascertained that the same position had continued and there was no change subsequently made by the General Manager. Hence this ground is not sufficient to warrant admission of the review.

5. The next ground urged by Mr Dhar is that the officer who had issued the charge sheet had no authority to do so and therefore the entire proceeding of the disciplinary enquiry was illegal and this aspect has not been considered in the judgment sought to be reviewed. In that connection it is stated in para 5(d) of the application that at the hearing the applicant had submitted that in view of Rule 215 of the IREC it transpired that the General Manager had not delegated his disciplinary power to any of the authorities subordinate to him but the Tribunal has not considered the said contention and therefore there is an error on the face of statutory law. We may only refer to para 11 of the judgment to say that this submission has no substance. It has clearly been stated as follows :

"Mr Dhar however vehemently argued that since according to the applicant the impugned order is illegal because it is passed by an authority who was not competent to remove him from service and therefore it was non-existent in the eye of law"

In para 12 it has been held that the applicant has not stated in the application as to who was his appointing

Will

authority nor he has produced the appointment letter and the contention based on Rule 215 has been examined, ^{thereafter} Eventually it is held ^{in para 17 that authority who issued the} that the charge sheet as well as the authority ^{who} to impose the penalty were fully competent to do so. If the applicant wants to contend that the view taken by us is erroneous his remedy would be by way of appeal and he cannot do so by a review application. Thus there cannot be said to be any error apparent on the face of the record on this ground as contended by Mr Dhar.

6. Third ground urged by Mr Dhar is that there is an error in para 12 of the judgment wherein it is stated that the departmental enquiry was held by the Office Superintendent (E) after a charge sheet was issued and served upon the applicant. Mr Dhar however admitted that there was not factual error in noticing this fact but he wants to say that it is an error because of the earlier contention about the competency of the authority to issue the charge sheet. We find no merit in this contention to hold that there is an error apparent on the face of the record.

7. Apart from the above contentions urged by Mr Dhar it has also been contended in the application inter alia that the appointment of enquiry officer was in violation of the rules and that a fraud was committed by submitting incomplete Schedule of 1989 in respect of Establishment Matters, that the respondents had concealed the facts of non divisionalised set up, that exhausting all alternative remedies under Section 20 of the Act was not an absolute bar to entertain an application and grant relief, that the Tribunal had acted arbitrarily in taking cognisance of the disciplinary action despite strong objection taken



contd... 5/-

and that all these circumstances amount⁹⁰ to show that the judgment suffers from material defects and there are errors apparent in law which need to be rectified. We are of the view that all these grounds are totally devoid of any substance and do not justify invoking jurisdiction in review. We may however mention that ~~a reading of~~ the Review application makes an unfortunate reading. An attempt is made to find faults with the Tribunal. Serious allegation of fraud is made against the respondents clearly as an after thought. It seems to be believed that the view taken by the Tribunal whether on a point of law or facts which is not to the liking of the applicant can be assailed under the guise of seeking review though proper remedy in that event could be by way of an appeal.

8. To summarise the allegations these are as follows :

i) Whereas earlier O.A. was disposed of within 6 months in this case the Tribunal liberally granted time for 27 months and the respondents exploited and utilised the time to complete the designed mischief against the petitioner, while making this allegation care is taken to say that the time was liberally granted 'on good faith'.

ii) The Tribunal had suo motu taken notice of the removal order (Implication is that it had thereby committed a wrong).

iii) Certain circulars and decisions including of Supreme Court had 'escaped' the attention of the Tribunal.

iv) As a result of fraud committed by the respondents in the matter of records and the fraudulent statements made both in the written statement as well as in the clarificatory note filed on oral direction of the Tribunal, the Tribunal was unable to arrive at a fair

Handwritten signature

decision to meet the requirement of justice.

v) Reliance on rules and records and statements made by the respondents without verification betrayed the fair play and justice in this case. (This is a direct allegation against the Tribunal).

vi) The root of petitioner's grievances have never been considered by the Tribunal resulting the effect of this judgment is an unexplained injustice meted to the petitioner.

vii) Certain points raised by the petitioner have ^{not} been considered.

viii) The facts and circumstances of the petitioner's case have not been considered by the Tribunal nor the law relevant in the case have been considered.

ix) The judgment does not indicate that the petitioner's grievances have been considered in independent application of mind.

x) The Tribunal ignored the factual and legal position causing serious injustice to the petitioner and passed the judgment.

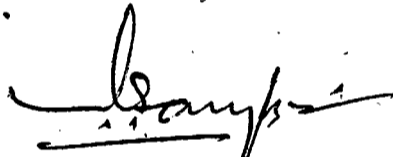
As regard these allegations it can only be stated that we cannot be expected to defend our judicial conduct or the view taken by us. Some of the allegations border on contempt though ~~concluded~~ ^{couched} in a language of submission. In any event these exhibit gross impropriety. We can understand the strategy of an unsuccessful litigant brooding under the belief that injustice has been done to him and ignore the allegations. A litigant also cannot expect every word or contention made at the hearing to be reproduced in the judgment. The judgment speaks for itself and if we have


W

contd... 7/-

erred in taking a certain view of the matter that can be urged before the superior court and cannot be sought to be changed by seeking review of the order. We do not therefore think it necessary to deal with each of the allegations culled out above from the petition. We have dealt with the points that have been urged before us by Mr Dhar and we have come to the conclusion that our order dated 8.2.95 does not appear to suffer from any error apparent on the face of the record and it does not call for review. We are not satisfied that even a prima facie case for review has been disclosed justifying admission of the application. The R.A. therefore is liable to be rejected.

The Review Application is summarily rejected.


(G.L.SANGLYINE)
MEMBER (A)


(M.G.CHAUDHARI)
VICE-CHAIRMAN