

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

This is the 09th day of October 2018.

Review Application No. 59 of 2011

In

ORIGINAL APPLICATION No. 1488 of 2005

Present:

HON'BLE Mr. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Asstt. Engineer Works (I) North Central Railway, Kanpur.

.....Applicants.

By Advocate: Shri P.K. Pandey

VERSUS

1. Chhotey Lal aged about 49 years, S/o Ram Sewak, R/o Pump House No. 952, Loco North Colony, North Central Railway, Kanpur.
2. Ram Ashray aged about 55 years, S/o Siddidin, R/o Out House No. 4/E, Loco Jamunia Bag Colony, Kanpur.
3. Daya Ram aged about 48 years, S/o Ram Dulare, R/o Plot No. 1411, Hanumant Bihar Naubasta, Kanpur.
4. Ram Chandra, aged about 49 years, S/o Brahmadin, R/o Kouri, Post Karo, District Allahabad.

By Advocate : Shri B.N. Singh

ORDER

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

1. This order disposes of the Review Application filed by the petitioner Union of India and ors seeking review of the order dated 19.5.2011 passed by this Tribunal in OA No. 1488 of 2005 titled Chhote Lal and Ors. Vs. UOI and Ors. wherein allowing the OA, the Tribunal declared that the applicants Chhote Lal and others are entitled to higher pay scales of Rs. 3050-4590 w.e.f. the date of their appointment as Valveman in Allahabad Division

and also directed the respondents to calculate and pay the arrears of pay and allowances.

2. Applicant seeks review of the order dated 19.05.2011 and thereby has prayed that the order disposing of the O.A. be reviewed and modified.

3. The applicant seeks review of the order on the ground:

- 1) That inadvertently the basic facts were not in the knowledge the then counsel for the official respondents, as such the correct facts could not be placed before the Tribunal for adjudication of the dispute.
- 2) After the decision it was revealed that the applicants cannot be granted the pay scale as allowed by the Tribunal on the basis of instructions and clarification issued by Executive Director, Pay Commission Cell vide instructions pertaining to year 1982 were circulated by the Railway Board.
- 3) That the Tribunal could not give specific direction for payment in the scale of Rs.950-1500/- (P.R.) for want specific pay for the post.
- 4) That the applicants of the O.A. are not entitled for the upgraded pay scale of Valveman in the scale of Rs.3050-4590 as there exist no grade for the post in question.
- 5) That the aforementioned facts were not in the knowledge of the official respondents, therefore, could not be placed before the Tribunal.
- 6) That the instruction issued by the Executive Director, Pay Commission was not in the knowledge of the present Divisional Authorities, which has specifically clarified the scale of pay for category of Valveman and the pay scale of Rs.3050-4590 (RSRP) does not exist so far as category of Valveman is concerned.

- 7) The orders of Executive Director, Pay Commission issued vide letter dated 31.12.2008 was not in the knowledge of the contesting respondents- Divisional Authorities.
 - 8) Because inadvertently the instruction issued by Railway Board in 1982 have wrongly been interpreted.
 - 9) Because no category of Valveman have been listed which has been allotted the pay scale of Rs.950-1500.
 - 10) Because the anomaly was considered in the departmental council meeting of Joint Consultative Machinery held on 21/22 May 1984 wherein resolution was passed to give salary to Valveman in the pay scale of Rs.196-232 which corresponds to Rs.750-940 (Pre Revised).
 - 11) Because the documents mentioned in review application was not within the knowledge of present contesting respondents and inadvertently the order has wrongly been complied with by wrongly interpreting the notification as mentioned in the representation of the applicant.
4. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record.
 5. It is settled law that review jurisdiction is available only on the grounds prescribed under Order XLVII Rule 1 of the Code of Civil Procedure, which contains only three grounds –
 - “(i) *mistake or error apparent on the face of record;*
 - (ii) *discovery of new and important matter or evidence, which, even after exercise of due diligence, was not within the knowledge of the review petitioner or could not be produced by him at the time when the order sought to be reviewed was passed; and*
 - (iii) *for any other sufficient reason”.*

6. The law governing the scope of review has been very succinctly laid down by the Hon'ble Court in:

- I. ***Ajit Kumar Rath v. State of Orissa and others, (1999) 9 SCC 596***, 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. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.
- II. ***Union of India v. Tarit Ranjan Das, 2004 SCC (L&S) 160***, the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an appellate court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.
- III. ***Inder Chand Jain(Dead) Through Lrs, Vs.Motilal (Dead) Through Lrs. Reported in (2009) 14 SCC 663***, It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.
- IV. Review is not appeal in disguised. In Lily Thomas Vs. Union of India, It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

7. Keeping in mind the principles laid down by the Hon'ble Apex Court in the above decisions, let us consider the claim of the review petitioner and find out whether a case has been made out by them for review of the order dated 19.5.2011 whereby O.A. 1488/2005 titled Chhote Lal and others v/s Union of India was disposed of.
8. After going through the records of OA No.1488 of 2005 and of the present R.A., it is clear that the respondents seek a review by arguing new facts which they could have known by due diligence. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. The appreciation of evidence/ materials on record, being fully within the domain of the appellate court, cannot be permitted to be advanced in the review petition. In a review petition, it is not open to the Tribunal to re-appreciate the evidence/materials and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence/materials and contentions of the parties, which were available on record, cannot be assailed in a review petition, unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. The applicants have not shown any material error, manifest on the face of the order under review dated 01.06.2017, which undermines its soundness, or results in miscarriage of justice. If the applicant-review petitioner is not satisfied with the order passed by this Tribunal, remedy lies elsewhere. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court.
9. Through this review application, the review applicant wants to re-open the entire issue a fresh which is not permissible in review. Review is permissible if there is an error of procedure apparent on the face of the record. The order was passed after hearing both the parties and all the points were discussed in the judgment which is again taken by the applicant in the review application

as such we found no error apparent on the face of record. It cannot be said by the applicants that based on discovery of new and important matter or evidence, which, even after exercise of due diligence, was not within the knowledge of the review petitioner or could not be produced by him at the time when the order sought to be reviewed was passed to seek review of the order.

10. It is also a settled law that it is not permissible during the hearing of the review application, this Tribunal should act as an appellate court and by rehearing the matter facilitate a change of opinion on merits. The power of review cannot be exercised to substitute a view.
11. In the light of what has been discussed above, we do not find that the review application is covered by the aforementioned three grounds to justify a review of the order dated 19.5.2011.
12. We do not find any valid ground to interfere. Thus, the review application is dismissed. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

(Gokul Chandra Pati)

Member (A)

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