

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-159/2015 in
OA-3808/2012**

Reserved on : 18.03.2016.

Pronounced on : 29.03.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

1. Sh. N.K. Gupta,
S/o late Sh. Janak Raj,
50 GF Ashok Enclave-I,
Sec-34, Faridabad,
Haryana.
2. Sh. Naresh Kumar,
S/o Sh. Makhan Lal Ji,
R/o 108, Vivekanand Puri,
Sarai Rohilla, Delhi-7.
3. Sh. Sunny Varughese,
S/o late Sh. T.U. Kuriakose,
R/o 30-OB, Aravali View Rail Vihar,
Sector-56, Gurgaon, Haryana. Review Applicants

(through Mrs. Meenu Mainee, Advocate)

Versus

Union of India through

1. Secretary,
Railway Board,
Rail Bhawan,
Rafi Marg, New Delhi.
2. Member Staff, Railway Board,
Rail Bhawan, Rafi Marg,
New Delhi. Respondents

(through Sh. Shailendra Tiwary, Advocate)

O R D E R

Mr. Shekher Agarwal, Member (A)

This Review Application has been filed by the OA applicants for review of our order dated 28.04.2015 by which the O.A. was dismissed. The respondents in O.A., who are also respondents in review, have opposed the review application.

2. Learned counsel for the review applicants stated that the main ground of delay in implementing the restructuring scheme in RBSSS cadre has not been dealt with by this Tribunal. According to her, after implementation of restructuring scheme in CSSS cadre, restructuring in RBSSS was delayed by as much as 08 months even though both cadres were at par. During this period, several persons of the cadre retired and were deprived of the benefit of the restructuring scheme. Learned counsel argued that for the fault on the part of the employer, the employees cannot be made to suffer. She has relied on several judgments, as mentioned below, on this issue:-

- (i) UOI Vs. Sadhna Khanna, SLJ 2009(1) SC 180.
- (ii) UOI Vs. Shanti Ranjan, SCCC 2009(3) 90.
- (iii) Habul Gosh & Ors. Vs. UOI & Ors., SLJ 2015 (1) 39.
- (iv) State of J&K Vs. Satya Pal, SLJ 2013(3) SC 341.

3. We have considered the aforesaid submission of the review applicants. In our opinion, the contention that the ground of delay in implementing of restructuring scheme in RBSSS Cadre has not been considered by this Tribunal is not borne out by facts. From our judgment, we notice that in para-3 of the same, this ground has been noted by us. Para-3 of the judgment reads as follows:-

"3. The grievance of the applicants is that the respondents have delayed implementation of restructuring. According to them, on account of parity between the two services, restructuring in RBSSS should have been implemented from the same date from which it was implemented for CSSS cadre. Due to delay in implementation, the applicants retired from service during the period from March 2011 to December 2011 and were consequently deprived of the benefits of this scheme. The applicants made several representations in this regard but no written reply was received from the respondents....."

3.1 Thereafter, this ground has been elaborately dealt with by us in para-6 of our judgment and rejected. The aforesaid para reads as follows:-

“6. We have heard both sides and perused the material on record. In our opinion, this OA is totally misconceived. While there may have been parity between RBSSS and CSSS in so far as pay scales were concerned, it does not follow that the cadre restructuring in both cadres should also take place from the same date. Cadre restructuring is done depending upon the prevalent circumstances of each cadre. The number of posts to be created/upgraded/downgraded or abolished depends on the requirement of each cadre. It is determined based on the workload in each service and its functional requirements. If restructuring was done in CSSS cadre, it does not follow that automatically, restructuring needs to be done in RBSSS cadre as well. Nevertheless, taking a cue from what the DOP&T did for CSSS, Railway Board also decided to examine the matter as far as RBSSS was concerned through a High Level Committee. Thereafter, they considered the recommendations of this Committee and decided to implement restructuring in RBSSS cadre also. As would be seen from the orders of implementation, the number of posts upgraded or downgraded or abolished is different in both the cadres. Thus, the parity between the two services claimed by the applicants, stops only at uniformity of pay scales in both services and does not extend to the number of posts upgraded in each cadre. It also cannot extend to the date on which the restructuring was done. The respondents had a right to examine the matter and determine the date from which such a claim needed to be implemented in the Railways without reference to the date on which this Scheme was implemented in CSSS.”

4. Thus, this ground has been considered by us and finding has been given on the same. It is obvious that instead of pointing out any error apparent on the face of the record in the judgment, the review applicants, in the garb of review, are questioning our findings and trying to re-argue the matter. If the review applicants are aggrieved by our finding, remedy lies elsewhere. They cannot be permitted to re-argue the matter since this would mean that we would be sitting in judgment over our own order. This is clearly beyond the scope of review.

4.1 While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo Singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

“It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude

a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

4.2 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the 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 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 in the rule.**

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

[Emphasis added]

4.3 In the case of **Gopal Singh Vs. State Cadre Forest Officers' Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to

review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

5. No other ground was pressed by the review applicants.
6. In view of the above, we find no merit in this review application and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member(J)

/Vinita/