

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

**RA-181/2013 in
OA-4408/2012**

Reserved on : 19.01.2016.

Pronounced on :25.01.2016.

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

Sh. Malkhan Singh,
S/o Sh. Ramesh Chand,
Working as Loco Pilot Passenger (LRJ),
Under Crew Controller,
Northern Railway,
Laksar (U.A.). Review Applicant

(through Sh. Manjeet Singh Reen, Advocate)

Versus

Union of India & Others : through

1. The General Manager,
Northern Railway,
Headquarter's Office,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad (U.P.).

3. The Divisional Personnel Officer,
Northern Railway,
Moradabad Division,
Moradabad (U.P.) Respondent

(through Sh. Shailendra Tiwary and Sh. VSR Krishna, Advocates)

ORDER

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by the OA applicant for review of our judgment dated 10.10.2013 by which the OA was dismissed. The review applicant has alleged that errors apparent on the face of the record have crept into the aforesaid judgment and, therefore, it needs to be reviewed.

2. Respondents have filed their reply opposing the review application. According to them, the review application is beyond the scope of Order-47, Rule-1 & 2 of CPC as no error apparent on the face of the record has been pointed out by the review applicant. In fact, he was just trying to re-argue the matter.

3. We have heard both sides and have perused the material on record. Mainly, two grounds were pressed by the review applicant during the arguments. The first ground was that as far as Question No.1 of Part-B was concerned, this Tribunal had come to the conclusion that 2 ½ marks awarded to the applicant on the bottom of the page at the left hand side were marks for the entire question, which had several parts. The review applicant had produced the answer sheet of one Sh. Bhim Singh, who appeared in the same examination to show that the examiner had marked

all parts of the question separately as was evident from page-45 of the paper-book of the review application. The respondents, on the other hand, argued that the answer books of the candidates have been evaluated by different examiners, who followed different methods of evaluation. Hence, it was not right to infer from the answer sheet of Sh. Bhim Singh that in applicant's answer sheet all the parts were not evaluated. While, we agree with the respondents that the evidence presented by the applicant does not conclusively prove that all the parts of the question in the case of the applicant were not evaluated, we also find that the total marks carried by this question indisputably were 05 and the applicant has been given 2 ½ marks in the same. It is difficult to presume that any part of the question alone would have fetched that many marks for the applicant. In any case, as was evident from our judgment, this was a finding arrived at by us after looking at all aspects of the matter. The answer sheet of Sh. Bhim Singh, which the applicant has now made available, had not been furnished at the time when his O.A. was being decided. Questioning the finding of the Tribunal would be beyond the scope of the review application for which remedy lies elsewhere.

3.1 The next ground taken by the applicant was that question no's 3.7.9, 12 & 18 in his answer sheet were not evaluated by the examiner on the ground that these were objective type of questions in which no cutting/erasing/over writing was allowed. Learned counsel for the review applicant argued that these questions were not objective type but were

short answer questions and instructions regarding not evaluating questions due to cutting/over writing/erasing were only applicable to objective type questions. Hence, he argued that this Tribunal had committed an error by coming to conclusion that the respondents cannot be faulted for not evaluating these questions.

4. We have perused our judgment and we find that this issue has been dealt with by us in Paras-6 to 6.3 in great details. After considering the matter in the light of Railway Board's Circular, we had arrived at a finding that the respondents had given clear instructions that objective type questions would not be evaluated if there was cutting/erasing/over writing. From the answer sheet of the applicant, it was evident that there was cutting as far as answers to these questions were concerned, and, therefore, evaluator had rightly not evaluated these questions. We had also rejected the applicant's arguments that these questions were not objective type in the light of Para-2.1 of the Railway Board Circular. Thus, what the applicant is questioning is again finding arrived at by us on this issue. As mentioned above, this is beyond the scope of review application. If we were to permit this, we would be sitting in appeal over our own judgment.

5. 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."

5.1 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]

5.2 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."

6. Thus, the two grounds pressed by the Review Applicant are not tenable. No other ground was pressed before us by the review applicant. Hence, we find that there is no merit in this review application and the same is dismissed.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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