

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

**RA-16/2015 in
OA-1436/2012**

Reserved on : 26.08.2015.

Pronounced on : 08.09.2015.

Hon'ble Mr. G. George Paracken, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sri Lal Singh Bainada,
Senior System Manager,
N.C. Railway,
Allahabad.

.... Review Applicant

(Review Applicant in person)

Versus

1. Union of India through
Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Central Railway,
CSTM.
3. Chief Personnel Officer,
Central Railway,
C.S.T., Mumbai.
4. Chief Commercial Manager,
Central Railway,
C.S.T., Mumbai.

..... Respondents

(through Sh. VSR Krishna and Sh. A.K. Shrivastava, Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by OA applicant
for review of our order dated 03.12.2014, the operative part of
which reads as follows:-

“5. We have considered the submissions of both sides

and have perused the material on record.

5.1 It cannot be disputed that had the seniority of the applicant been correctly assigned by the respondents then he would have been eligible for the ACS examination conducted in 1989. By a mistake committed by the respondents he was deprived of this opportunity. This was subsequently corrected by orders of this Tribunal dated 13.03.1997. The respondents challenged this order in Writ Petition which was dismissed only on 17.04.2009. Thus, due to prolonged litigation the applicant was deprived of his rightful benefits for a long period of almost 25 years. Therefore, there is merit in his contention that he has been made to suffer due to a mistake committed by the respondents. Under these circumstances, we do not feel that the respondents are right in saying that the applicant has exercised option of working in APO stream in the year 2002 and he cannot be considered for promotion as ACS from the year 1989. However, we find that promotion as ACS was on the basis of LDCE and not on seniority alone. Had it been based only on seniority, we would have given directions to the respondents to hold a review DPC and consider ante dating of applicant's promotion. Since selection for the post of ACS was on the basis of merit in LDCE in which relative merit of the candidates appearing has to be judged, it is not now possible to direct the respondents to give him benefit of ante dated promotion and seniority. This would disturb long standing position of various candidates who might have succeeded in this examination or in subsequent examination. Moreover, it cannot be said with certainty that had the applicant been allowed to appear in the ACS examination, he would have succeeded. Under these circumstances, the only benefit that can be given without affecting third party rights is that of pay fixation and back wages. Since the ACS and APO are in the same pay scales this benefit can be given to the applicant while letting him continue to work as APO.

6. We, therefore, direct the respondents to re-fix the pay of the applicant by notionally ante dating his promotion to the date on which his immediate junior was promoted as ACS through the 1989 examination. The applicant shall also be entitled to arrears arising out of re-fixation of pay as above. We, however, make it clear that the applicant need not be granted seniority in the APO cadre based on the date of notional promotion. These directions be implemented within a period of eight weeks from the date of receipt of a certified copy of this order. Accordingly, this O.A. is disposed of. No costs."

2. The review applicant has contended that this Tribunal had rightly come to the conclusion that grave injustice had been caused to the applicant by a mistake committed by the respondents and consequently he had been deprived of his rightful benefits for a long period almost 25 years. The Tribunal has also rightly concluded that had this mistake not been committed by the respondents, the applicant would have got an opportunity to appear in the 1989 Examination for promotion as ACS. He has stated that having come to this conclusion, the Tribunal should have directed the respondents to hold a supplementary test for the applicant for interpolating his name in the panel of 1989, in case, he was found fit in such a test. According to the applicant, such a direction would have been natural and legal. However, the Tribunal has granted him benefit of pay fixation and back wages only. According to him, this benefit deprives him of his right to come at par with his immediate juniors and also does not make him eligible for next promotion along with them. In his support, he has relied on the following two judgments of Hon'ble Supreme Court:-

(i) **Shaukar K. Mandal Vs. State Bank of Bihar**, SC/SLJ 2003(2) 35.

(ii) **C. Chenchana**, AIR 1953 Mad 39

to say that if some issue has escaped the attention of the Court and not been considered then it is a fit case for review. He has further relied on the judgment of Hon'ble Supreme

Court in the case of **S. Nagraj**, JT 1993(5) 27 to say that if there is a valid mistake in the order then the same should be recalled.

3. The respondents have filed their reply in which they have stated that the review applicant does not bring out any ground or reason for review. They have further submitted that they have filed Writ Petition before the Hon'ble High Court of Delhi against the aforesaid order and the same is likely to be listed before Hon'ble High Court shortly.

4. We have heard both sides and have perused the material on record. On going through our order in question, we find that we had come to the conclusion that the respondents had indeed committed a mistake in fixation of seniority of the applicant, which was corrected only after prolonged litigation lasting for almost 25 years. Consequently, the applicant was deprived of appearing in the ACS Examination conducted in 1989. The applicant had prayed for grant of promotion as ACS from the year 1989. However, we had come to the conclusion that promotion to ACS was on the basis of LDCE and not on seniority alone. Even if the applicant's seniority had been correctly fixed, he would have only got a chance to appear in the ACS Examination. It cannot be said with certainty that he would have succeeded in the same. Moreover, in such a examination, relative merit of the candidate is judged and it cannot be said with certainty that the applicant would have successfully

competed with rest of the candidates. Further, it was concluded that upsetting promotion granted on the basis of 1989 Examination at this belated stage would affect third party rights. Under these circumstances, only the benefit of notional promotion and pay fixation as well as arrears arising out of such fixation was allowed to the applicant.

5. From the averments made by the review applicant, it is clear that he has not pointed out any error apparent on the face of the record in the judgment. He is only trying to re-argue his case for getting the relief, which has not been granted to him in the aforesaid order. If the applicant is aggrieved by the findings of this Tribunal then he is at liberty to approach higher Judicial forum. However, he cannot question the same through a review application. If we allow his review application then we would be acting as an Appellate Authority over our own judgment and writing a fresh judgment.

5.1 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."

5.2 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]

5.3 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.”

5.4 The applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Shaukar K. Mandal** (supra), **S. Nagraj** (supra), and Hon'ble Madras High Court in the case of **C. Chenchena** (supra). However, in our opinion, none of them is applicable in the instant case since there is no error in the judgment which the review applicant has pointed out.

6. Under these circumstances, we do not find any merit in this Review Application and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(G. George Paracken)
Member (J)

/Vinita/

