

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI**

**R.A. No.332/2004
IN
O.A. No.2189/2003**

**Reserved On:10.05.2016
Pronounced On:18.05.2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Ram Avtar Gupta
S/o Shri Om Prakash Gupta
R/o 1937, Tisri Gali, Panna Puri,
Hapur (Ghaziabad). ...Review Applicant

(Argued by: Shri S.K. Gupta, Advocate)

Versus

1. Union of India
Through General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Additional Divisional Railway Manager,
Northern Railway,
Moradabad.
3. Sr. Divisional Signal & Telecom Engineer,
DRM Office,
Moradabad. ..Respondents

(By Advocate: Shri Sat Pal Singh)

ORDER

Justice M.S. Sullar, Member (J)

The contour of the facts, relevant for deciding the
instant Review Application (RA), is that initially applicant,

Ram Avtar Gupta filed Original Application (OA) No.2189/2003, challenging the impugned penalty order and orders of Appellate Authority (AA) and Revisional Authority (therein).

2. Having completed all the codal formalities, the OA was partly allowed vide order dated 03.11.2004 by a Coordinate Bench of this Tribunal which. The operative part of the order is as under:-

“ 28. In this view of the matter, having regard to the aforesaid reason, the orders passed by the respondents cannot be sustained in law. Accordingly, OA is allowed to the extent that the (sic) of compulsory retirement and orders affirming it are set aside. Respondents are directed to forthwith reinstate applicant in service. He shall be entitled to all consequential benefits. However, in the facts and circumstances of the case, we do not allow any back wages to him. Respondents are further directed to comply with these directions within a period of three months from the date of receipt of a copy of this order. No costs”.

3. Now the Review Applicant has preferred the instant RA on the ground that when the copy of judgment was received on 24.11.2004, he came to know that the back wages have not been allowed. The Review Applicant was compulsorily retired from service by way of punishment after holding the Departmental Enquiry (DE). It was alleged that, once he has been exonerated from the indicated charges on merits, then withholding actual arrears of pay (back wages) was not justified.

4. According to the Review Applicant, in the wake of order passed by the Hon'ble Delhi High Court in some

other case **CW No. 8230/2002** titled as **Jeevan Lal and Others Vs. U.O.I. & Others**, the matter was remitted back to the Tribunal for reconsideration of question of grant of back wages. Thereafter, on remand, this Tribunal has allowed the amount of back wages to the applicant Jeevan Lal (therein) for the intervening period vide order dated 19.11.2003 in MA Nos.2060 and 2340 of 2003 in OA No.1928/1999.

5. In all, the Review Applicant claimed that since similarly situated Jeevan Lal (applicant therein) got the back wages by this Tribunal, so he is also entitled to the same relief. Thus there is an error apparent on the face of record in this regard. On the basis of the aforesaid allegations, the Review Applicant has sought to review the instant RA.

6. The contesting respondents refuted the claim of the Review Applicant and filed the counter-affidavit, inter alia, pleading certain preliminary objections of maintainability of the RA being time barred and locus standi of the Review Applicant.

7. However, on merits, it was pleaded that the Review Applicant has failed to point out any error apparent on the face of record in the judgment dated 03.11.2004 upheld by Hon'ble Delhi High Court dated

13.10.2010 in **Writ Petition (C) No.3855/2005.**

Therefore, the present RA is not maintainable in view of the law laid down by the Hon'ble Apex Court in the cases of **Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, M/s. Associates Tubewell Limited Vs. Gujramal Modi AIR 1957 SC 742 and M/s Northern India Caterers (India) Ltd. Vs. Lt. Governor, Delhi AIR 1980 SC 674..**

8. It will not be out of place to mention here that the respondents have stoutly denied all the allegations contained in the RA and prayed for its dismissal.

9. Controverting the allegations contained in the reply filed by the respondents and reiterating the grounds of RA, the review applicant has filed the rejoinder. That is how we are seized of the matter.

10. Having heard the learned counsel for the parties and going through the record, we are of the considered view that there is no merit in the present RA.

11. As is evident from the record that this Tribunal had specifically denied the back wages to the Review Applicant vide detailed order dated 03.11.2004 in OA No.2189/2004 on the principle of "no work no pay".

12. Ex-facie, the argument of learned counsel for the Review Applicant that since this Tribunal had granted the

benefit of back wages to similarly situated Jeevan Lal in some other case, so the judgment dated 03.11.2004 in OA No.2189/2003 of this Tribunal deserves to be reviewed, is neither tenable nor the observations of the Hon'ble Apex Court in ***U.O.I. Vs. Namit Sharma (2013) 10 SCC 359*** in which facts and observation are entirely different, are at all applicable to the present case of the Review Applicant.

13. What cannot possibly be disputed here is that the grant of back wages would depend upon variety of factors. The Hon'ble Apex Court in a line of judgments has recognized and applied the principle of "no work no pay" while declining the back wages to the employees. The reliance in this regard can be place to a judgment of Hon'ble Supreme Court in the case of ***Vijay Singh Vs. U.O.I. & Others AIR 2007 SC 1384.***

14. Now it is well settled principle of law that the previous order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of

any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed or **made on account of some mistake or error apparent on the face of the record**. Equally it is now well recognized that the scope for review is rather limited and it is not permissible for the forum, hearing the review application, to act as an Appellate Authority, in respect of the original order, by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can also be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.***

15. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612.*** Having interpreted the scope of review and considering the catena of previous judgments mentioned

therein, the following principles were culled out to review the orders:-

- “(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.
- (vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier”.

16. Meaning thereby, the original order can only be reviewed if case squarely falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. The mere fact that this Tribunal has granted the back

wages in some other case to Jeeven Lal, applicant (therein), ipso facto, is not a ground, much less a cogent one, to review the indicated order of this Tribunal. In the instant RA neither the review applicant has pleaded nor urged any error on the face of record, warranting a review of the previous order dated 03.11.2004. All the issues now sought to be urged were subject matter of OA and have already been adjudicated upon by the Tribunal. In case, the applicant was aggrieved by the order of this Tribunal, he ought to have challenged the same in the superior forum.

17. Be that as it may, no ground, much less any cogent ground, has been made out that could warrant review of the order and hence the RA deserves to be dismissed.

18. In the light of the aforesaid reasons, as there is no merit, the RA is dismissed, as such. No costs.

**(V.N. GAUR)
MEMBER (A)**

**(JUSTICE M.S. SULLAR)
MEMBER (J)**

Rakesh