

**Central Administrative Tribunal
Principal Bench**

RA No.160/2018
in
OA No.147/2014

New Delhi this the 19th day of September, 2018.

**HON'BLE MRS. JASMINE AHMED, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Gopal Mukherjee,
S/o Sh. D. Mukherjee,
R/o D/3/40, Vashist Park,
Pankha Road,
New Delhi-110046.

-Applicant

-Versus-

1. Delhi Metro Rail Corporation Ltd.
Through the Managing Director,
Delhi Metro Rail Corporation,
Metro Bhawan,
New Delhi.
2. The Director (Operations),
Delhi Metro Rail Corporation,
Metro Bhawan,
New Delhi.
3. The General Manager (Operations),
Delhi Metro Rail Corporation,
Metro Bhawan,
New Delhi.
4. The DGM/Train Operations,
Delhi Metro Rail Corporation,
Metro Bhawan,
New Delhi.

-Respondents

O R D E R (By Circulation)**Shri K.N. Shrivastava:**

Through the medium of this Review Application (RA), filed under Order XLVII, Rule (1) of Civil Procedure Code, readwith Section 22 (3) (f) of the Administrative Tribunals Act, 1985, the review applicant (original applicant) has sought review of Tribunal's order dated 23.04.2018 in OA-147/2014 vide which the OA was partly allowed in the following terms:

- a) Impugned Annexure A-1 order passed by the Appellate Authority and Annexure A-2 order passed by the Disciplinary Authority are quashed and set aside. The Disciplinary Authority is directed to impose any penalty lesser than the penalty of removal from service.***
- b) In view of the (a) supra, the respondents are directed to reinstate the applicant in service within four weeks from the date of receipt of a certified copy of this order. It is, however, made clear that the applicant shall not be entitled to any back wages.***

2. The main grounds pleaded in the RA for review of the order dated 23.04.2018 are as under:

2.1 The finding of the Hon'ble Tribunal that the applicant shall not be entitled to any back wages is erroneous being contrary to FR 54 (B), according to which there is absolutely no provision under which the authorities have the powers to deny full back wages for the intervening period.

2.2 The finding of the Tribunal as regards failure to examine key witness, contained in para-13 of the order under review, is erroneous because this Hon'ble Tribunal has ignored the judgment

of the Hon'ble Supreme Court quoted by the applicant's counsel in the case of **Hardwari Lal v. State of U.P.**, [(1999) 8 SCC 582].

2.3 The Hon'ble Tribunal has not followed the judgments of Hon'ble Supreme Court/High Court relied upon by the applicant nor recorded any findings thereon. The delay of four years was due to Court's delay during which the applicant had been without any job and as such the discretion regarding back wages ought to have been exercised in favour of the applicant. The Hon'ble Tribunal had not given any reasons, much less any justification for denying the back wages.

2.4 The decision of the Hon'ble Tribunal is erroneous because neither it is reasonable nor it is a judicious exercise of discretion.

2.5 In all disciplinary matters where punishment of removal/ dismissal has been challenged, this Hon'ble Tribunal had quashed the orders being violative of the decisions of the Hon'ble Supreme Court /High Court/Central Administrative Tribunal and directed the respondents to reinstate the employee with full back wages.

3. We have perused the RA. The scope of review lies in a narrow compass as prescribed under Order XLVII, Rule (1) of CPC. None of the grounds raised in the RA brings it within the scope and purview of review. It appears that the review applicant is trying to re-argue the matter afresh, as if in appeal, which is not permissible. If in the

opinion of the review applicant the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, he cannot be allowed to raise the same grounds, which were considered and rejected by the Tribunal while passing the order under review.

4. Existence of an error apparent on the face of the record is *sine qua non* for reviewing the order. The review applicant has failed to bring out any error apparent on the face of the order under review.

5. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that

“the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision.”

At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

“(i) The power of 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 specific grounds

(iv) *An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (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 a larger bench of the Tribunal or of a superior court*

(vii) *A decision/order cannot be reviewed under Section 22(3)(f).*

(viii) *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.*

(ix) *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.”*

6. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed in circulation.

(K.N. Shrivastava)
Member (A)

(Jasmine Ahmed)
Member (J)

‘San.’