

**Central Administrative Tribunal
Principal Bench
New Delhi**

RA No.79/2018
MA No. 4576/2017
In
O.A.No.3698/2017

New Delhi this the 28th day of May, 2018.

***HON'BLE MR. JUSTICE DINESH GUPTA, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Bhagwati Sharan Tiwary,S/o Shri Nathuni Tiwary,R/o 0-11/1, Airport Authority of India Colony,Vile Parte (East), Mumbai, Maharashtra-400099.

-Applicant

-Versus-

1. Union of India, Through its Secretary,Ministry of Civil Aviation, Govt. of India, Rajiv Gandhi Bhavan, Opp. Safdarjung Airport,New Delhi-110003.
2. The Under Secretary, (Aviation Security), Ministry of Civil Aviation, Govt. of India, Rajiv Gandhi Bhavan, Opp. Safdarjung Airport, New Delhi-110003.
3. The Director General, Bureau of Civil Aviation Security, Ministry of Civil Aviation, Govt. of India, 'A' Wing, 3rd Floor, Janpath Bhawan, Janpath, New Delhi-110001.
4. Shri Kumar Rajesh Chandra, Director General,Bureau of Civil Aviation, Govt. of India, 'A' Wing, 3rd Floor, Janpath Bhawan, Janpath, New Delhi-110001.
5. Smt. Radharani Poojari, Senior Clerk,Office of Regional Director, Bureau of Civil Aviation, Security Mumbai, Ground Floor, New Airport Authority Bldg, Parsiwada, Opp. Solitaire Hotel, New Airport Authority of India Colony, Vile Parle (East), Mumbai, Maharashtra-400099.

-Respondents

O R D E R (By Circulation)

Hon'ble Mr. K. N. Shrivastava, Member (A):

This Review Application (RA) has been filed by the review applicant under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, seeking review of this Tribunal's order dated 13.04.2018 in OA No.4576/2018.

2. The review applicant has pleaded the following important grounds for seeking review of the Tribunal's order dated 13.04.2018 passed in MA No.4576/2017 in OA No.3698/2017:

i) The Hon'ble Tribunal failed to appreciate that the Digital Signatures are governed by Information Technology Act, 2000 and the Digital Signature was not affixed as per the governing law by the Hon'ble Minister for granting approval for issuance of the charge-sheet to the applicant and therefore this Tribunal ought not to have dismissed MA No.4576/2018 as the entire enquiry is being proceeded on an illegal and arbitrary charge-sheet.

ii) This Hon'ble Tribunal failed to consider that no certificate of Section 65 (B) of Indian Evidence Act, 1872 was provided along with the electronic record which was submitted by the respondents along with their reply and hence this Hon'ble Tribunal should not have relied on the said electronic record.

iii) It is settled position of law that any electronic record being produced has to be supported with a certificate under Section 65 (B) of the Indian Evidence Act, 1872 as held by the Hon'ble Supreme Court in **Harpal Singh v. State of Punjab**, (2017) 1 SCC 734.

iv) The Hon'ble Tribunal failed to appreciate that the respondents action of proceeding with the departmental enquiry without proper authorization is illegal and arbitrary and violative of the Fundamental Rights of the applicant. The issues that were raised have neither been referred nor have been adjudicated.

3. A mere reading of these grounds and other points raised in the RA would give an impression as though the review applicant has tried to re-argue the case. As a matter of fact, the RA appears to be in the nature of an appeal, which is not permissible under law.

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

6. 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.”

7. 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)

(Justice Dinesh Gupta)
Chairman

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