

**Central Administrative Tribunal
Principal Bench**

M.A. No.3419/2018
R.A. No.0137/2018
In
O.A.No.1128/2015

New Delhi this the 14th day of August, 2018.

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

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Muradabad Division,
Muradabad (UP).

... Review Applicants

Versus

Suneel Kumar, aged 22 years
s/o Late Sh. Chote Lal,
presently working as Technician-III
under Training, Northern Railway, Muradabad
r/o Village Kalyanpur Patti, PO Kakrowa,
Tesh, Sadar, Distt. Rampur (UP)

... Respondent

O R D E R (By Circulation)

Through the medium of this Review Application (RA), filed under Section 22 (3) (f) of the Administrative Tribunals Act, 1985, the review applicants, who were respondents in OA No.1128/2015, have sought review of order dated 21.11.2017 passed in the said OA.

2. The OA was filed by the original applicant/respondent in the OA, seeking the following relief:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 6.1.2014 by which the applicant has been given appointment to the post of Technician-III (PB 5200-20000+GP 1900) Annex. A/1) instead of appointing him to the post of Guard or any other posts of Grade pay of Rs.2800/-, declaring to the effect that the same is totally illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to appoint the applicant to the post of Guard or any other post of Grade Pay of Rs.2800/- as done in the cases of similarly situated persons, immediately with all the consequential benefits”.

3. The Tribunal, after considering the rival contentions of the parties and perusing the pleadings, allowed the OA vide order dated 21.11.2017, with the following directions:

“10. In the conspectus of the discussions in the foregoing paras, this OA is allowed with a direction to the respondents to appoint applicant on the post of Guard in the grade pay of Rs.2800/- w.e.f. 06.01.2014, i.e., from the date of issuance of the Annexure A-1 appointment letter to the applicant. This shall be done within a period of three months from the date of certified copy of this order. It is, however, clarified that the applicant shall not be eligible for any arrears of pay.”

4. Aggrieved by the above order, the respondents/review applicants have filed the instant RA. The main grounds pleaded in the RA for review of the order dated 21.11.2017 are as under:

4.1 There are errors of law and fact apparent on the face of the order and hence the order dated 21.11.2017 is liable to be reviewed.

4.2 The Hon’ble Tribunal has erred in not taking into consideration the fact that at the time of issuing the appointment

letter to the respondent (original applicant), there was no vacancy available in the category in the Grade Pay of Rs.2800/- and thus he along with six other incumbents was appointed in the post of Tech.III/Electrical with Grade Pay of Rs.1900/-. The Tribunal, therefore, erred in not appreciating the fact that in the absence of any vacancy in the Grade Pay of Rs.2800/- the direction given to appoint the respondent/original applicant as a Guard in Grade Pay Rs.2800/- is erroneous and needs to be corrected.

4.3 It is settled law, as enunciated by the Hon'ble Supreme Court that the courts would not like to pass directions granting appointment to individual persons since such a direction is in the realm of executive domain.

4.4 The Tribunal has erred in observing that the circular dated 07.08.2009 issued by the Railways appears to be discriminatory and hence the observation made is erroneous since the circular is in the nature of policy decision and within the prescription of Articles 14 and 16 of the Constitution of India and judgments rendered by the Apex Court. It is submitted that the vires of the said circular was not under challenge and therefore there was no such material available for the Hon'ble Tribunal to observe that the circular appears to be discriminatory.

4.5 The Tribunal did not consider the averments made in the counter-reply and to that extent the order dated 21.11.2017 may be reviewed in the interest of justice.

5. I 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 applicants are trying to re-argue the matter afresh, as if in appeal, which is not permissible. If in the opinion of the review applicants the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, the review applicants cannot be allowed to raise the same grounds, which were duly considered and rejected by the Tribunal while passing the order under review. Existence of an error apparent on the face of the record is *sine qua non* for reviewing the order. The review applicants have failed to bring 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 an 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, I do not find any merit in the RA. Accordingly, the RA is dismissed in circulation.

8. In view of the above, no separate order is required to be passed in MA No.3419/2018, which accordingly stands disposed of.

(K.N. Shrivastava)
Member (A)

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