

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. RA 350/00012/2016
(OA 350/00941/2015)

Date of Order: 18.8.16

Present: Hon'ble Ms Bidisha Banerjee, Judicial Member

UNION OF INDIA & ORS.

VS

JITENDRA PRASAD DUBEY

For the Applicant : Mr A. K. Banerjee, counsel

For the Respondents : None

O R D E R

O.A. 941/2015 was disposed of on 7.7.15 with the following order :

"6. We find that in order to implement the decision of the Hon'ble Apex Court a direction has been given by the Railway Board to constitute a Placement Committee for recommendations of transfer/posting of Railway employees. The instructions nowhere indicate that so long the Placement Committee is not constituted, the powers shall remain vested with the individual officers empowered to transfer the employees or that the instructions shall take effect only after constitution of Placement Committee. Since in view of the Railway Board's order dated 10.6.14 the individual authorities, who were empowered to transfer, have been divested of their power to transfer without the proposal being routed through a Placement Committee, the transfer order issued by APO/III/KIR for DRM(P), Katihar, N.F. Railway is quashed with liberty to the respondents to act in terms of the Railway Board's letter dated 10.6.2014.
7. O.A. is accordingly allowed. No order as to costs."

2. The RA is sought for on 2.5.16 after a delay of about 10 months. There is no prayer for condonation of delay.

3. It has been decided in a Larger Bench of the Hon'ble Andhra Pradesh High Court in **G.Narasimha Rao vs. Regional Joint Director of School Education, Warrangal & Others, 2005(4) SLR 720**, that belated application for review cannot be entertained :

".....The right of review is not a right of appeal where all questions decide are open to challenge. The right of review is possible only on

limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all time to come. Public policy demands that there should be end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. A right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

4. We have noted that the grounds of review are as under :

- i) For that the Hon'ble Tribunal while passing order did not consider the Railway Board's letter dated 10.6.14 in respect of transfer of union official.
- ii) For that the order passed by the Hon'ble Tribunal is not based on the provisions of Railway Board's letter dated 10.6.14.
- iii) For that if the said order is amended this may be a weapon to others for getting order in favour of other applicants.

5. The order in OA was issued with full opportunity to both the counsels to place their materials on record. The Railway counsel never indicated that the transfer was routed through a Placement Committee, rather he had submitted as under :

"ld. Counsel for the respondents submitted that so long the Placement Committee is not constituted the transfers can be affected by individual officers without being routed through the Placement Committee."

6. That apart we have noted that assuming there was a committee, there was no meeting of minds as the word 'committee' being plural in form, no

officer can act on behalf of a committee unless specifically empowered to take a decision himself and get it endorsed on a different date.

7. We find that the Apex Court in the **State of West Bengal & Ors. Vs. Kamal Sengupta and another**, 2008 (3) AISLJ 209, vide para 28 of its judgment has held that the ingredients to be met in case of a review order has to be the following :

- (i) Power of Tribunal to review is akin to Order 47 Rule 1 CPC read with Section 114,
- (ii) Grounds enumerated in Order 47 Rule 1 to be followed and not otherwise,
- (iii) Any other sufficient reason appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) Order cannot be reviewed on the basis of subsequent decision/judgment of co-ordinate larger Bench or superior Court,
- (v) Adjudication with reference to material which was available at the time of initial decision. Subsequent event/development is not error apparent.
- (vi) Mere discovery of new/important matter or evidence not sufficient ground for review. The party has to show that such matter or evidence was not within its knowledge and even after exercise of due diligence, the same could not be produced earlier before the Tribunal.

The Apex Court in **Gopal Singh vs. State Cadre Forest Officers' Association & Ors.**, (2007) 2 SCC (L&S) 819, has held that "a Tribunal cannot sit over its own judgment as an appellate authority." It cannot write a second order. In a review reasons have to be given why a review is justified. Error apparent on the face of the record has to be justified.

8. In such view of the matter, the Review Application fails and is accordingly dismissed.

(BIDISHA BANERJEE)
MEMBER (J)