



**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH
KOLKATA**

RA No.350/00021/2016
O.A.No. 350/00177/2016

Date of Order:02/08/2016

CORAM :

Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Smt. Binita Mitra, wife of Sanjeev Mitra, aged about 51 years, working for gain as FA & CAO/WS, South Eastern Railway, Garden Reach, Calcutta 700043 residence at 7/1A, Railway Officers Colony, J.K.Pal Road, New Alipore, Calcutta-700 038.

..... Applicant

-Versus-

1. The Union of India, service through the General Manager, South Eastern Railway, Garden Reach, Calcutta-700043.
2. The Railway Board service through the Secretary, Rail Bhavan, Raisina Road, New Delhi-110 001.
3. The Director, Railway Board, Rail Bhavan, Raisina Road, New Delhi-110 001.
4. The Financial Commissioner, Railway Board, Rail Bhavan, New Delhi-110001.
5. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-700043.
6. The FA & CAO, South Eastern Railway, Garden Reach, Calcutta-700043.

..... Respondents.

For the Applicant :Mr.D.Samanta, Counsel

O R D E R

JUSTICE V.C.GUPTA, JM

This Review Application filed by the Applicant has been placed under circulation. The order which has been sought to be reviewed has been passed by us. So we jointly considered the matter. The relief sought by the applicant in this OA is as under:

"a) Directing that the instant review application be placed before an appropriate Bench for hearing on merits upon notice to the respondent railway authorities;

b) Directing review of the said order dated 30.05.2016 by recalling the same and passing further orders quashing and/or setting aside the impugned order dated 08.03.2016 of appointment of the Inquiry Officer and that portion of the impugned order dated 29.03.2016 of the Disciplinary Authority which rejects the prayer of your applicant for being allowed inspection of the selection file from which the RUDs emanate, and direct the said authority to allow inspection of the selection file from which the RUDs emanate within such time frame as may be deemed fit by this Learned Tribunal to enable the applicant to file her written statement of defence to the impugned charge memorandum within a fortnight thereafter and thereupon directing the Disciplinary Authority to render consideration upon such written statement of defence of the applicant and pass orders in accordance with law either dropping the departmental proceedings or appointing Enquiring Authority for the purpose of proceeding with the departmental proceedings with further directions for filing of reply/rejoinder in the said OA and to restrain the respondent authorities from acting in any manner or any further manner on the basis of the impugned charge memorandum dated 25.03.2015, being Annexure A-16" to the OA pending disposal of the original application/review application;

c) And/or to pass such other or further order/orders as to Your Lordships may seem fit and proper."

2. The order sought to be reviewed in this RA is a reasoned and detailed order passed after giving due opportunities to both the parties. The Applicant's prayer is that the order passed by this Tribunal on merit on 30.05.2016 be recalled and quash the impugned order dated 08.03.2016 of appointment of the Inquiry Officer, and the portion of the impugned order dated 29.03.2016 of

the Disciplinary Authority rejecting the prayer of the applicant to allow him to inspect the selection file from which the RUDs were emanated. He also prayed to direct authority to allow inspection of the selection file from which the RUDs were emanated within a stipulated period thereby enabling the applicant to file her written statement of defence to the impugned charge memorandum within a fortnight thereafter and directing the Disciplinary Authority to pass appropriate orders dropping the departmental proceedings.

3. The short question that falls for our consideration is as to whether with this prayer this RA can be entertained in view of the principles set out in order 47 Rule 1 CPC in which it has been provided as under:

"Any person considering himself aggrieved-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed, or

c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."

From the above it is crystal clear that a review is maintainable on the following grounds, as stipulated by the statute:

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- ii) Mistake or error apparent on the face of the record;
- iii) Any other sufficient reason.

4. It is not the case of the applicant in this RA that any error was crept in the final order which is contrary to the record. In fact, as we find that the applicant virtually through this Review Application seeks of a rehearing of the entire matter which is not permissible under the law.

5. The Hon'ble Apex Court as well as by this Bench, on numerous occasions, had deliberated upon the very same issue, arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. In **Aribam Tuleshwar Sharma v Aribam Pishak Sharma**, (1979) 4 SCC 389=AIR 1979 SC 1047, the apex court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code of Procedure was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to the apex court, it was held as under:



"It is true as observed by this Court in *Shivdeo Singh v State of Punjab*, AIR 1963 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. **But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal.** A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(Emphasis added)

6. The judgment in *Aribam Case*, AIR 1979 SC 1047 has been followed in the case of *Meera Bhanja*, AIR 1995 SC 455. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning.

7. In *Parsion Devi & Ors. vs. Sumitri Devi & Ors.*, (1997)

8 SCC 715, the Hon'ble Apex Court also held as under:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. **In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected.** A review petition, it must be

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remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

(Emphasis added)

8. The above being the facts and law, we find no ground to entertain this Review Application which is accordingly dismissed.

Inform the parties accordingly.

(Ms. Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member

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