CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

RA No. 15 of 2012
(arising out of OA No. 554/2009)

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Benga Dei, aged about 76 years, W/o Late Sri Lochan, At-Patharkata, PO – Baradi Harikunda, Dist. – Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its General Manager, Rail vihar, chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO/Jatni, Dist. – Khurda.
3. Additional Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO/Jatni, Dist. – Khurda.
4. Divisional Engineer, East Coast Railway, Khurda Road, Khurda.
5. Assistant Engineer (South) East Coast Railway, Khurda Road, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.M.K.Das, counsel

Heard & reserved on : 10.1.2019 Order on : 29.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this Review Application (in short RA), which is directed against the order dated 6.8.2012 of this Tribunal in OA NO. 554/2009, by which the OA was dismissed.

2. The facts in brief, are that the applicant had filed the OA No. 554/2009 for quashing the charge sheet issued against him and for release of his retiral benefits. In the RA, it is mentioned that the respondents informed at the time of consideration of OA that the proceedings against the applicant have been finalized and the amount due to him would be released. During pendency of the OA, the respondents filed counter on 2.8.2011 informing that due to conviction of the applicant in a criminal case, he was dismissed retrospectively from service w.e.f. 31.8.2001 vide order dated 22.9.2009 under the Rule 14(ii) of the Railway Servants (D&A) Rules, 1968. The applicant, by way of amendment to the OA had challenged the order dated 22.9.2009. It is stated in the RA that at the time of hearing of the OA it was submitted by the applicant's

counsel that in another case of the railway servant, who was also convicted of the same offence as the applicant, the OA has been allowed by the Tribunal. Vide order dated 6.8.2012 of the Tribunal (Annexure A/1 to the RA), the OA No. 554/2009 ws dismissed. This RA, which is filed within the stipulated time, is directed against the order dated 6.8.2012, mainly on the following grounds :

(i) In another OA No. 78/2009 (Parsu –vs- UOI & Others), under similar circumstances, the OA No. 78/2009 was allowed and the punishment order was quashed by the Tribunal. The OA filed by the applicant was dismissed and although at the time of hearing, the applicant's counsel mentioned about the OA NO. 78/2009, if was not taken into account while passing the final order.

(ii) From the date of reserving the order, the order should have been pronounced within 3 weeks as per the rules. Since it was pronounced beyond 3 weeks, it is liable to be reviewed.

(iii) The point raised in the OA that the dismissal order dated 27.11.2009 with retrospective effect from 30.8.2001was illegal, has not been considered by the Tribunal while passing the order dated 6.8.2012.

(iv) It is mentioned in the order that the applicant failed to produce the corrigendum dated 2.9.2009, which was not there in the disciplinary proceeding file. It was contended that the corrigendum was not issued as no issue number was mentioned. But the point was not considered.

(v) Liberty was given to applicant's counsel to file written notes by 27.6.2012. It was filed on 3.7.2012 which was not considered while pronouncing the order on 6.8.2012.

3. It is the settled law that the review of the order of this Tribunal can be taken up under the Rule-1 Order no 47 of the CPC, which specifies limited grounds for permitting the review. Hon'ble Apex Court in a number of cases has held that the review cannot be resorted to get a different interpretation or decision from what is mentioned in the impugned order. Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC), states as under:-

> "1. Application for review of judgement
> (1) Any person considering himself aggrieved-
> (a) by a decree or order from which an appeal is allowed, but from 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,
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> 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 judgement to the Court which passed the decree or made the order.

4. The position of law regarding scope of review under Rule 1 Order 47 was considered in the judgement of Hon'ble Supreme Court in the case of **Kamlesh Verma v. Mayawati And Others** reported in 2013 AIR SC 3301 and it was held as under:-

> "18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. 2006 5 SCC 501, held as under: (SCC pp. 504-505, paras 11-12)
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> > "11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.
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> > 12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a *review* petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."
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> 19. 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 cpc. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.
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> Summary of the principles
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> 20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
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> 20.1 When the review will be maintainable:
>
> (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;
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> (ii) Mistake or error apparent on the face of the record;
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> (iii) Any other sufficient reason.
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> The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. JT 2013 8 SC 275
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> 20.2 When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

5. It is clear from above that, the scope of review by this Tribunal is limited to the grounds of (i) discovery of any new and important facts or evidence which was not within the applicant's knowledge and which, after exercise of due diligence, was not within his knowledge or could not be produced at the time of consideration of the O.A.; or (ii) some mistake or error apparent on the face of the record; or (iii) for any other sufficient reasons. It is also settled law that any other ground mentioned in the Rule 1 has to be analogous to the reasons mentioned in the rules and the review cannot be in the form of an appeal or rehearing of the matter.

6. Learned counsel for the applicant was heard on the RA. Besides reiterating the points mentioned in the RA, he argued that the OA No. 78/2009 with similar facts, cited at the time of hearing of the OA, was not considered while passing the judgment. It was submitted that the applicant's counsel was allowed to file written submissions by 27.6.2012 when the order was reserved, but it was not taken on record as it was filed on 3.7.2012 i.e. after expiry of the time granted. He also filed a copy of the letter dated 23.8.2012 of the Section Officer returning the written submissions submitted by him on the ground of its delayed receipt.

7. Learned counsel for the respondents on the other hand argued that the applicant's husband was dismissed for conviction in criminal offence for which he was dismissed as discussed in the impugned order dated 6.8.2012. He also submitted that in case of OA No. 78/2009, the proceeding was quashed as it was passed without any show cause notice to Sri Parsu, who was convicted along with the applicant for the same crime. Subsequently, learned counsel for

the respondents submitted a written memo on 16.1.2019 informing that in the case of Sri Parsu, a show cause notice was issued, which was challenged by him in OA No. 414/2013, on which the interim order was passed not to take any action on the show cause notice. Then vide order dated 3.5.2018, the OA No. 414/2013 filed by Sri Parsu was dismissed. It is further stated that no reply to the show cause notice has been furnished by Sri Parsu.

8. We will consider if the grounds taken in the Review Application by the applicant and in the submissions by the applicant's counsel can be legally valid ground to allow the RA. It is averred in para 16 of the RA that non-consideration of the order dated 3.7.2012 of the Tribunal in a similar case OA No. 78/2009, was a mistake. In reply, the respondents have stated in para 14 of the counter to the RA that the case of the Sri Parsu & Sri lLochan (husband of the present applicant) are similar in nature, since both of them were convicted for the same crime. No final decision has been taken by the respondents in case of Sri Parsu as stated in the written memo submitted by the respondents' counsel. From the submissions of the respondents, it is clear that in case of Parsu, no final order has been passed by the competent authority on the disciplinary proceedings under Rule 14(ii). But in view of the observations of this Tribunal in the order dated 3.7.2012 passed in OA No. 78/2009 that being convicted of the crime, Sri Parsu will not be entitled for consequential benefits of that order like retirement benefits. Since in the case of Sri Parsu, no show cause notice was issued before passing the punishment order, it was quashed by the Tribunal in OA No. 78/2009. This was not the case in the OA filed by the applicant/applicants husband. Hence the OA No. 78/2009 was factually different. Hence, its non-consideration while passing the impugned order cannot be considered to be an error.

9. Learned counsel for the applicant, at the time of hearing of this Review Application had submitted that he was informed by the Registry vide notice dated 23.8.2012 that the written note was not taken to the record as it was filed after the time granted by the Tribunal. Copy of the notice dated 23.8.2012 of the Registry returning his written note has been filed by the applicant's counsel. The letter dated 23.8.2012 stated that the written notes submitted by the applicant's counsel on 3.7.2012 to the Registry did not form part of the record as it was received beyond the time stipulated by the Tribunal. Normally, the written note submitted by the applicant's counsel after the dateline, should have been placed in the record with the comment that it was submitted belatedly. Had it been placed on record, it could either have been considered or not considered on the ground of late submission. Moreover, the written note is not apart of the pleadings as per the rules. It is generally submitted to summarise the important pleadings/grounds as well as case laws/citations

relied upon by the counsel. It is the discretion of the Tribunal to allow submission of written notes/submissions. But no new ground beyond the grounds taken in the main pleadings can be taken in the written notes. Moreover, what specific points mentioned in the written note were not considered by the Tribunal, have not been mentioned in the RA. Hence, non-consideration of the written notes cannot be considered to be a valid ground for reviewing the impugned order dated 6.8.2012.

10. It is also mentioned in the Review Application that the impugned order was passed without considering relevant documents and relevant points raised in the OA i.e whether the order of dismissal vide order dated 22.9/27.11.2009 dismissing the applicant retrospectively w.e.f. 31.8.2001 is permissible in the eye of law. On this point, it is clear that the order of dismissal impugned in the OA was not interfered by the Tribunal and the ground raised in the RA amounts to a different interpretation of law, which cannot be an error apparent on the face of record. Hence, this ground taken in the Review Application cannot be treated as a ground to justify review of this Tribunal's order as per law.

11. Another ground in para 18 of the RA is that the Tribunal, while passing the impugned order dated 6.8.2012, did not decide many important issues. But the specific issues or grounds which have not been decided, have not been mentioned in para 18 of the RA. The specific grounds in the RA have been discussed in para 8-11 of this order and these are not found to be valid ground under law to justify the review as prayed for in this Review Application.

12. In view of above discussions, we are of the considered view that the grounds advanced in the Review Application for justifying the review are not adequate grounds under law for reviewing the impugned order dated 6.8.2012 of the Tribunal. Accordingly, the Review Application lacks merit and hence, it is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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