CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

RA No. 16 of 2012
OA No. 533 of 2008

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

Satya Narayan patnaik aged about 43 years , S/o Sri Balaram Swain of Vill. – Nilapali, PO – Kulasar, PS – Raj Ranpur, Dist. – Nayagarh presently working as Loco Pilot (Goods) in the office of the Chief Crew Controller, East Coast Railway, Khurda Road, PO – Jatni, Dist. – Khurda.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railways, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. – Khurda.
2. Chief Personnel Officer, East Coast Railways, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. – Khurda.
3. Divisional Railway Manager, East Coast Railways, Khurda Road, PO – Jatni, Dist. – Khurda.
4. Sr.DPO, East Coast Railways, Khurda Road, PO – Jatni, Dist. – Khurda.
5. Sr.DMR, East Coast Railways, Khurda Road, Jatni, Dist. – Khurda.

.....Respondents

For the applicant : Mr.B.Dash, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 6.3.2019 Order on : 13.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this Review Application (in short RA), impugning the order dated 12.9.2011 of this Tribunal in OA No. 533/2008, by which the OA was dismissed.

2. The facts in brief, are that the applicant had filed the OA No. 533/2008 challenging the marks awarded to him in the test conducted by the respondents for selection for the post of Loc Inspector (Mech) (referred in short as LIM). As against the cut off mark of 60, the applicant was given 59 marks unfairly to deprive him from being selected. The applicant had received the copy of his answer sheets for the test which showed that some of the answers have not been evaluated correctly. As per the judgment of Hon'ble High Court

in similar cases, the applicant had sought in the OA for a direction to the respondents for rectification/proper evaluation of the answer sheets as there were manifest errors.

3. The respondents have opposed the OA by citing judgments of Hon'ble Apex Court and stating that the questions have been correctly evaluated. Vide the impugned order, the Tribunal dismissed the OA and the said order dated 12.9.2011 has been challenged in this RA on following grounds:-

(i) The applicant did not challenge the selection process, but questioned award of marks in some questions as there compelling circumstances in this case for re-evaluation as per the judgment of Hon'ble High Court in Rashmi Ranjan Sahoo & anr. vs. Board of secondary Education, Orissa and another reported in 2003(1)OLR 419.
(ii) It is stated in the impugned order that the existing rule prohibits any re-evaluation of the answer scripts. But the respondents have not produced any rule prohibiting re-evaluation. Hence, it is a mistake apparent on the face of the record.
(iii) The judgment in AIR 2004 SC 4116 has no application in this case as the respondents have not produced any rule to prohibit re-evaluation.
(iv) The claim of the applicant that it is not a re-evaluation but rectification of errors. The judgment cited by the applicant was not discussed.
(v) It was observed in the impugned order that there was no access to the model answers, but the model answers could have been called for alongwith the answer scripts. Hence, it is also an error.
(vi) It was not necessary for the Tribunal to rectify the error, but the respondents could have been directed to rectify such error.

4. The respondents have filed their counter, opposing the RA by stating that the applicant could not secure the minimum qualifying marks in the test. It is further stated that the case decided by Hon'ble High Court was for the Board of Secondary Education and it is not connected to the present case.

5. We have heard learned counsels for both the parties on the RA. The applicant's counsel pointed out 2 errors apparent on the face of the record as pointed out in the RA. The respondents' counsel submitted that there is no apparent error on the face of the record. The contention in para 4.11.of the OA regarding incorrect evaluation was denied in para 11 of the counter which has been taken note of by the Tribunal.

6. This RA has been filed within the time stipulated under the law. 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), which 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,

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.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.]"

7. The position of law in this regard was considered in the judgement of Hon'ble Supreme Court in a number of cases. In the case of **Kamlesh Verma v. Mayawati And Others** reported in **2013 AIR SC 3301**, it was held by Hon'ble apex Court 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)

"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.

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."

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.

Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

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;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

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

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."

8. In the case of **Ajit Kumar Rath v. State of Orissa reported in (1999) 9 SCC 596**, Hon'ble Apex Court reiterated the principles governing the power of review vested in the Tribunal and held as under:-

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under section 114 read with order 47 CPC**.** The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent

> error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in order 47 rule 1 means a reason sufficiently analogous to those specified in the Rule.
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> 31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

9. In the case of **Inder Chand Jain (Dead) through Lrs. Vs. Motilal (dead) through Lrs. (2009) 14 SCC 663,** Hon'ble Apex Court held as under:-

> "10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.
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> 11. Review is not appeal in disguise. In Lily Thomas v. Union of India this Court held : (SCC p. 251 para 56)
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> > "56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise."

10. From above position of the law, which is squarely applicable to this Review Application also, it is to be decided if the applicant has been able to bring on record any factual errors apparent on the face of the record or any new facts which were not known earlier. It is stated in the RA that since the respondents have not produced the rule denying re-evaluation of answer script, the observation in the impugned order that the rule does not allow re-evaluation is an error apparent on record. We are unable to agree with such contention. In the OA, the applicant sought for re-evaluation of his answer script. Hence, it was his responsibility to have produced the rule governing the examination or he should have requested the Tribunal to call for such rule if he felt that the rule does not prohibit re-evaluation as sought by him. The applicant should have demonstrated before the Tribunal his prayer for relief did not violate the rule applicable. Also, the applicant could have produced a copy of the rules to show that the observation in the impugned order was a mistake. In absence of such rules before us, we are not able to agree with the applicant's contention that the observation of the Tribunal in the impugned order was an error apparent on record.

11. As regards the contention that the observation that lack of access to the model answer was an error as no direction was given to the respondents to produce the model answer. It was up to the applicant to have requested the

Tribunal to direct the respondents to produce the model answers to prove that his answer script was not correctly evaluated. It was necessary to verify the answers with the model answer to demonstrate if any obvious mistakes are there in the valuation process. Non-production of the model answer cannot be termed as an error apparent on the face of the record.

12. Another ground taken in the RA was that the applicant actually wanted rectification of error not re-evaluation. The applicant had mentioned in his OA that some of the questions answered by him were not evaluated or wrongly given marks. Hence, the applicant effectively wanted re-evaluation of some of his answers and the contentions of the applicant in this regard in the RA cannot be termed as rectification of error only. In any case, such a ground is not a valid ground for review under law.

13. We are not convinced by other grounds advanced in the Review Application to be legally valid grounds based on which review of the impugned order dated 12.9.2011 in OA No. 533/2008 can be considered.

14. In view of the discussions above, the Review Application is devoid of merit and hence, it is liable to be dismissed. Hence, the Review Application is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath