



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

**No. R.A. 16 of 2018
O.A. 1315 of 2016**

Date of order: 14.12.2018

**Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

BIDHAN CHANDRA DAS

Vs.

UNION OF INDIA & ORS. (Posts)

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : None

ORDER ON REVIEW PETITION (Disposed of by Circulation)

Per Dr. Nandita Chatterjee, Administrative Member:

This Review Application has been filed by the applicant in O.A. No. 1315/2016 under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for review of the order dated 4.9.2018 passed by this Tribunal in the aforesaid O.A. by which it was disposed of with the findings of the Tribunal that the Tribunal did not find it necessary to interfere with the orders of the disciplinary authority, and that the O.A. is dismissed on merit. The respondent authorities, however, were at liberty to dispose of such dues, as were admissible to the applicant, as per law.

2. The Registry had placed this Review Petition for decision by circulation as per Rule 49 of Central Administrative Tribunal Rules of Practice, 1993 and it was held that the matter be listed for preliminary hearing prior to disposal of the matter. A preliminary hearing was held on 30.11.2018 upon which the applicant had submitted his written notes of arguments.

3. We have carefully gone through the case records.

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4. In this Review Application, the following relief has been sought:-

"In view of above it is most magnanimously prayed that your Lordships will graciously be pleased to allow the review application by granting the reliefs as prayed in the Original Application setting aside the order dated 4.9.2018 and to pass such other order or orders and/or Direction or Directions as your Lordships deem fit and proper in favour of the applicant and against the respondents."

5. The applicant in the Original Application as well as Review Application, an erstwhile Assistant Director of Postal Services, South Bengal Region, Kolkata with the respondents, had prayed for the following relief in the Original Application:-

"(a) To issue direction to the respondents to draw and disburse the arrear salary of your applicant since September, 2015 to till date along with penal interest, treating the entire forcible period of absence since September, 2015 to till date as on duty and issue lawful joining order in promotional post (SSPOs, South Hooghly Division) of your applicant.

(b) To quash and/or set aside the impugned Memorandum of Charge-Sheet dated 4.1.2016 which has been issued by an incompetent authority against your applicant being Annexure A-13 of this original application.

(c) To quash and/or set aside the impugned penalty order of withholding of promotion dated 14.6.2016 (Annexure A-18) issued by the incompetent authority i.e. Smt. Arundhaty Ghosh, Chief Postmaster General, West Bengal Circle, Kolkata, who cannot act as a disciplinary authority as per Rule 12(2) of CCS (CCA) Rules, 1965 as because your applicant is belonged to IPS, JTS Group 'A' Cadre and Smt. Arundhaty Ghosh, Chief Postmaster General, Kolkata by imposing punishment against your applicant which is contrary to law and may be liable to quashed and/or set aside in the eyes of law being Annexure A-18 of this original application and to give all consequential benefits accordingly.

(d) To declare that the action taken by Smt. Arundhaty Ghosh, Chief Postmaster General, West Bengal Circle, Kolkata against the applicant in respect of issuing the impugned chargesheet (Annexure A-13) as well as penalty order of punishment (Annexure A-18), are absolutely bad in law and illegal.

(e) To declare that withholding of the salary of the present applicant since September, 2015, issuing unlawful charge sheet (Annexure A-13) and final order (Annexure A-18) and also not allowing your applicant to resume duty (as SSPOs, South Hooghly Division) to the promotional post which has issued by the higher authority of the postal department by approval of the President of India (Annexure A-12) by the office of the Chief Postmaster General, West Bengal Circle, Kolkata are absolutely bad in law and illegal and the respondent Nos. 1 and 2 be directed to take appropriate action against them for illegality committed by them for violation of constitutional provisions and different rules and laws of the land by not releasing the salary of the applicant and by not allowing the present applicant (who did not commit any single misconduct throughout his 37 years long span of service life) to join duty in the promotional post who will be retired from service with effect from 30th June, 2017.

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(f) The Respondents Nos. 1 to 5 be directed to take appropriate action against Smt. Babi Lahiri, SSPOs, Burdwan Division (Respondent No. 8) for assuming charge of the SSPOs, South Hooghly Division at 1000 hrs. on 01.09.2015 without the knowledge of your applicant and violating Rule 42 of Postal Manual Vol.-IV and other extant Rules. For this irregular act of Smt. Lahiri, the South Hooghly Division was headed by two Divisional Heads for the period from 1.9.2015 to 3.9.2015 as your applicant was also on duty for the said period.

(g) The respondent No. 7 be directed to provide copy of service book to the applicant.

(h) The respondent No. 5 be directed to sanction amount of withdrawal in accordance with application dated 23.7.2016 (Annexure -23).

OR

(i) Alternatively:

Whatever punishment has been imposed by Smt. Arundhaty Ghosh, Chief Post Master General, West Bengal Circle, Kolkata vide order dated 14.6.2016 (A-18), may be implemented.

Any other reliefs, as deemed fit and proper by the Hon'ble Tribunal."

His claims were controverted by the respondents and, after hearing both sides, this Tribunal, vide a detailed order dated 4.9.2018, had dismissed the O.A. on merit and at the same time directed the respondents to dispose of admissible dues, if any, to the applicant, as per law.

6. After considering the material on record, the Tribunal came to a conclusion that the application was without merit.

While filing the Review Application, the applicant has started with a preamble, which states as follows:-

"3. That, giving due respect to the said "Order passed by the Hon'ble Tribunal on 04.09.2018". (hereinafter called "the Order") , I requested the respondent No. 5 vide my letter dated 18.9.2018 (endorsing copies to all concerned by regd. Post) to effect payment of my admissible dues "as per law", and the said letter was sent to the respondents No. 8 and 5 through registered post letter No. RW256702892IN and RW256702597IN respectively. I also stated therein that if my admissible dues are paid within a week 'as per law', then I will not proceed further and withdraw my complaints lodged against them. I also requested to intimate their views to me soon. But no response is received till date and no amount is paid to me after passing the said Order. I am a victim of extreme discrimination since 2015 which were reflected in my O.A., rejoinder, reply against the affidavit submitted and written argument dated 20.8.2018. I earnestly requested them to pay my dues but in vain. Hence, being compelled, I sought to review the Order on the following grounds."

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Upon a perusal of the above statement, it is seen that the applicant would not seek a review of the orders of the Tribunal, if his admissible dues were paid within a week. Not having received any such payment from the respondents, however, and being compelled, the applicant has sought the review of the Tribunal's order on certain grounds.

It is noted here that the Tribunal had not directed the respondents to dispose of the admissible amount within a week of passing of the order. Further, the Tribunal had directed the respondents to act as per law and it was entirely the prerogative of the respondents to decide on the admissibility of the applicant's dues in terms of rules which governed the field in case of the applicant. The applicant, by his own admission, has approached the Tribunal upon compulsion and not upon ~~prima facie satisfaction~~ on patent error in the orders of the Tribunal. He has sought the review as an afterthought at not having received any further dues from respondents within a week of passing of the order.

The applicant, in his Review Application, has cited the following apparent errors appearing on the face of the records of the order of the Tribunal:-

- (a) That the note sheet referred to at page 12 of the Tribunal's order does not mention the file number and that the order of keeping his promotion in abeyance was never communicated to him. That, in the 1st paragraph of said note sheet as furnished by the respondents it was recorded that the enquiry against the applicant was conducted by an ADPS who was an Gr. "B" Officer and being junior to the applicant by one rank, the entire enquiry stood vitiated and the enquiry report would be void ab initio. The applicant also refers to the second para of the note sheet wherein he was described as "the then SSPOs, South Hooghly Division" without mentioning his status upon reversion.
- (b) As the respondent No. 8 in the O.A. was an incompetent authority, the chargesheet issued by the incompetent authority was void ab initio.
- (c) That, the copies of his Service Book annexed at pages 11-13 of his Reply dated 10.7.2018 were not taken into account by the Tribunal despite the fact that they were authenticated records in respect of his status and every step of his official career.

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The submissions of the applicant in the Review Petition, particularly on the errors apparent on face of record/orders are now examined in detail.

(a) The extracts of page 1 of the file produced by the respondents in response to instructions of the Tribunal, do not suffer from any infirmity as because file numbers are mandatorily recorded and noted on cover page of the file and what was obvious from the notings is that the notes referred to the applicant and none other. The main contention of the applicant of the O.A. was the lack of competence of the disciplinary authority, namely, respondent No. 8, who was the Chief Postmaster General, West Bengal Circle, Kolkata and the lapses of the so-called incompetent authority in issuing a void chargesheet and an invalid penalty order of punishment on account of her lack of competence as disciplinary authority in the case of the applicant.

This matter has been dealt with at length by the Tribunal while passing its orders, particularly, in its examination of the Schedule of Delegation of Powers, while establishing the status of the applicant as a Gr. 'B' Officer at the material point of time and after taking into account all documents cited in support by both the applicants and the respondents. Hence, at this stage, it is not required to re-appreciate evidence to arrive at a different conclusion.

(b) It is also worthwhile to note that the incompetence of the Enquiry Officer was never raised by the applicant while claiming relief in the O.A. and his entire arguments focussed on lack of authority of the CPMG, West Bengal Circle, respondent No. 8.

(c) The applicant's reference to his service book is once again referred to and, as extracted from B-5 of his reply dated 10.7.2018, the following is quoted from his Service Book as under:- (emphasis supplied)

"Promoted to JTS of JPS Gr. 'A' in the Pay Band Rs. 15600-39100/- with grade pay Rs. 5400/- in purely on temporary and officiating basis for a maximum period of 11 months /retirement or till joining of the regular incumbent whichever is earlier vide ADPS (Staff), O/o. the Ch. PMG, W.B. Circle Memo No. SFA/P-68/XXII dated 8.12.2014

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and the officer assumed the charge w.e.f. 19.12.2014 (F/N) according to SSPO's, S. Hooghly Dn. No. B-96/SF/GO Arrgt./S. Hooghly dtd. 19.12.2014.

Sd/-
Assistant Accounts Officer
Office of the General Manager(PA &F)
Kolkata.

In pursuance of C.O. memo No. SFA/B-2706 dated 31.8.2015 **reverted to the substantive grade in PS Gr. B cadre** on administrative ground with immediate effect and allotted to SB Region."

Sd/-
Assistant Accounts Officer
Office of the General Manager(PA &F)
Kolkata.

In pursuance of G.I. Min. of Communication & IT DOP of Posts order No. 4-2/2015-SPG dated 31.12.2015 promoted to the JTS of the IPOs, Gr. 'A' on regular basis in PB-3 + G.P. Rs. 5400/- w.e.f. the date of assumption of charge and again vide G.I. Order No. 4-2/2015-SPG dtd. 9.6.2016 it is conveyed to keep the promotion in abeyance i.e. deemed sealed cover until complete examination of the charges.

Sd/-
Assistant Accounts Officer
Office of the General Manager(PA &F)
Kolkata.

It is clear from the above notings in his service book (as annexed by the applicant himself), that:

- (i) He was engaged on purely "on temporary and officiating basis" and that he assumed the charge purely on temporary and officiating basis w.e.f 19.12.2014.
- (ii) That, the applicant was reverted on 31.8.2015 to the substantive grade in PS Gr. B cadre on administrative grounds;
- (iii) That, the implementation of his promotion order dated 31.12.2015 was kept in abeyance i.e. deemed sealed cover until complete exoneration.

[Signature]

Hence, the entries in his Service Book (as extracted) has neither been ignored nor left out of consideration by the Tribunal while issuing its order dated 4.9.2018, as each of the records establish his status as a Gr. 'B' officer.

It appears, therefore, that adequate and cogent reasons were recorded before coming to the conclusion that the O.A. deserves to be dismissed on merit and the grounds advanced by the applicant fail to establish that there was any error apparent on record/in the Tribunal's order. Hence, there is hardly any scope for exercising our limited power of review or order vested in this Tribunal to take a different view in this matter.

In this respect, so far as the scope and extent of power of review of order vested in this Tribunal is concerned, we are guided by the Hon'ble Apex Court in ***Chandra Kanta and another v. Sheikh Habib* (AIR 1975 SC 1500)** that-

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obvious insufficient."

Further in ***Meera Bhanja v. Smt. Nirmala Kumari Choudhury* [AIR 1995 SC 455]**, the Hon'ble Apex Court has held as under:-

"Error apparent on face of record, means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions."

Further, at this stage of Review Application, the applicant has brought in arguments on procedural lapses, flaws in chargesheet, transfer of charge as well as, has admitted, that he wishes to introduce new evidence as RA-2, RA-3 and RA-4 of the Review Application. The above is clearly not permissible at this stage.

The Hon'ble High Court of Chattisgarh at Bilaspur in the case of ***Kamru and Another v. Govardhan and others***, (Review Petition No. 20 of 2014) while deciding on 16.4.2014 held as under:-

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"11..... It is trite at this juncture to refer to certain decisions rendered by the Hon'ble Supreme Court on the question of entertaining the review petition in the matters of Kerala State ElectricityBoard vs. Hitech Electrothermicsm & Hydropower Ltd. And others reported in (2002) 6 SCC 651; Government of T.N. & Others v. Ananchu Asari and others reported in (2005) 2 SCC 332, Ajit Kumar Rath vs. State of Orissa and others reported in AIR 2000 SC 85, Lily Thomas etc. vs. Union of India and others reported in AIR 2000 SC 1650 and Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary reported in AIR 1995 SC 455.

All these judgments referred to above deals with the scope of a review petition and the crux of all these judgments, as a matter of principle as laid down by the Hon'ble Supreme Court is that in the garb of a review petition, the petitioner cannot be permitted to argue the entire case afresh which would amount to converting the review petition into an appeal unless there is an error on the face of the record and on the part of the Court in the passing of the judgment against which the review is sought for."

The Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of **Dr. (Mrs.) Keerti Mathur v. State of Rajasthan & others**. Civil Writ Review Petition No. 92/2014 in Civil Writ Petition No. 6334/2012 held as under:-

".... Review Petition can be entertained only on the ground of there being mistake apparent on the face of the record and therefore, review petition cannot be filed only for the purpose of re-arguing the entire matter all over again. Arguments raised in support of review petition question the legality of the judgment which the petitioner can always assail in special appeal before the Division-Bench."

The Central Administrative Tribunal, Ahmedabad Bench in the case of **Premilaben B. Gohil vs. Union of India & ors.**, RA No. 8 of 2013 in O.A. No. 298/2012 held as follows:-

"7. When such rival contentions are raised by both sides, the matter cannot be agitated in a RA because this is not permissible, in terms of the detailed guidelines for RA as laid down by Hon'ble Apex Court in State of West Bengal v. Kamal Sengupta & Another, 2008 (3) SLJ 209 (SC) = (2008) 2 SCC (L&S) 735. Hon'ble Supreme Court at Para 35 of the aforesaid judgments had laid down the law relating to the powers of the Administrative Tribunal to review its decision under Section 23(f) of Administrative Tribunals Act, 1985 as follows:-

- (i) The power of the 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, 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 specified 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 on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

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- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.
- (vii) 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.
- (viii) 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."

8. In the light of the law laid down by Hon'ble Apex Court as above, the present RA is not maintainable and hence the same is rejected."

In view of the relevant provisions relating to review and various judgments pronounced by the Hon'ble Supreme Court, it is well settled that any decision / order, even if erroneous, cannot be corrected in the guise of exercise of review and that the powers of review can be exercised only on account of some mistakes or error apparent on the face of the record.

7. Considering the above legal position and the grounds raised by the applicant in the present R.A., it is obvious that the applicant intends that the Tribunal should re-appreciate the entire evidence brought on record in the O.A. to come to a different conclusion. In such circumstances of the case, there is hardly any scope for Review of the order dated 4.9.2018 passed by the Tribunal in O.A. No. 1315 of 2016. Consequently this Tribunal does not find any merit in the present Review Application.

8. The Review Application is, accordingly, dismissed by circulation without issuing notice to the respondents. Registry is directed to forward copy of the order to Ld. Counsel for both parties.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member