

(Under circulation)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

R.A. No.60 of 2019
IN
O.A. No.652 of 2016

This the 27th day of February, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

1. Gaurav Singh (Aged about 23 years)
S/o Sh. Dhirig Raj
R/o H.No. 280-A, Railway Colony
Arya Nagar, Ghaziabad (UP)
2. Dhirig Raj (Aged about 59 years)
S/o Sh. Nankar Singh
Working as Senior Pointsman
Under S.S. Ghaziabad
R/o H.No. 280-A, Railway Colony
Arya Nagar, Ghaziabad (UP)
3. Suneel Dutt (Aged about 29 years)
S/o Sh. Manmohan
R/o H. No. 3/127, Gali No. 2
Sankar Garden, Railway Line Paar
Near Parasar Medical Store Bahadurgarh.
4. Manmohan (Aged about 59 years)
S/o Sh. Ram Swaoop
Senior Pointsman
Under S.S. DSJ
R/o H. No. 3/127, Gali No. 2,
Sankar Garden, Railway Line Paar
Near Parasar Medical Store Bahadurgarh.

...Review Applicants

(Filed by Advocate Shri P.S. Khare)

Versus

Union of India Through

1. The General Manager
Northern Railway
Baroda House, New Delhi.

2. The Divisional Railway Manager
Delhi Division, Northern Railway
State Entry Road, New Delhi.
3. The Divisional Personnel Officer (Admn.)
DRM Office, New Delhi.

.....Review Respondents

O R D E R

Ms. Nita Chowdhury, Member (A):

The present Review Application is filed by the Review Applicant seeking review of the Order dated 16.1.2019 passed in OA 652/2016 by this Tribunal.

2. We have perused the said Order under Review. The grounds taken in the present Review Application are not based on any error apparent on the face of record. In fact, the averments made in paras 1. to 9. in the RA are not in any manner related to error apparent on the face of record but the same are relating to questioning the conclusion arrived at by this Tribunal in the said Order. If we agree to applicants' prayer, we would be going into the merits of the case again and re-writing another judgment of the same case. By doing so, we would be acting as an appellate authority, which is not permissible in review. This Tribunal dismissed the OA on the ground that in a similar case, i.e. OA No. 960/2016 (**Pala Ram v. Union of India &Ors.**), it is found that the Railway Board, vide its letter No.E(P&A)I-2015/RT-43 dated 26.09.2018, has terminated the LARSGESS Scheme in view of directions of Hon'ble High Court of Punjab and Haryana and

the orders of Hon'ble Supreme Court in SLP (C) No. 508/2018 dated 08.01.2018. The said order of the Railway Board reads as under:-

“Sub:Termination of the LARSGESS Scheme in view of directions of Hon'ble High Court of Punjab and Haryana and the orders of Hon'ble Supreme Court of India in SLP (C) No. 508/2018 dated 08.01.2018.

Ref: Board's letter of even number dated 27.10.2017.

The Hon'ble Punjab and Haryana High Court in its judgment dated 27.04.16 in CWP No. 7714 of 2016 had held that the Safety Related Retirement Scheme 2004 (later renamed as the Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS, 2010) “prima facie does not stand to the test of Articles 14 and 16 of the Constitution of India” It had directed “before making any appointment under the offending policy, let its validity and sustainability be revisited keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment.” Thereafter, in its judgment dated 14.07.17 (Review Petition RA-CW-330-2017 in CWP No. 7714 of 2016), the Hon'ble High Court reiterated its earlier direction and stated “such a direction was necessitated keeping in view the mandate of the Constitution Bench in State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1.”

1.1 In the Appeal against the judgment of the Hon'ble High Court of Punjab & Haryana, the Hon'ble Supreme Court of India, while disposing of the SLP (C) No. 508/2018 vide its order dt. 8.01.18, declined to interfere with the directions of the High Court.

2. In compliance with the above directions, Ministry of Railways have revisited the scheme duly obtaining legal opinion and consulted Ministry of Law & Justice. Accordingly, it has been decided to terminate the LARSGESS Scheme w.e.f. 27.10.2017 i.e. the date from which it was put on hold. No further appointments should be made

under the Scheme except in cases where employees have already retired under the LARSGESS Scheme before 27.10.17 (but not normally superannuated) and their wards could not be appointed due to the Scheme having been put on hold in terms of Board's letter dated 27.10.17 though they had successfully completed the entire process and were found medically fit. All such appointments should be made with the approval of the competent authority."

5. Quite clearly, the scheme of LARSGESS has now been terminated w.e.f. 27.10.2017. Hence, at this stage, applicants cannot be given any benefits under LARSGES Scheme as the said Scheme is not in existence.
3. Since the applicant No.2 and applicant no.4, who are seeking consideration of the cases of their wards, i.e., applicant no.1 and applicant no.3, are still working in the respondents organization and their ages is 59 years and as such there is no question of consideration of the cases of their wards in terms of LARSGESS's Scheme even though they might have moved any such applications prior to 27.10.2017. As such the reliance placed by the review applicants on the decision of the Hon'ble High Court of Judicature for Rajasthan in D.B. Civil Writs No.12610/2018 decided on 11.1.2019 is not relevant to the facts and circumstances of the present case. In the case of ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma***, [AIR 1979 SC 1047], the Hon'ble Supreme Court has observed as follows:-

"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 is inherent in every Court of plenary jurisdiction to prevent

miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive 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 power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

Again in the case of ***Ajit Kumar Rath vs. State of Orissa and others***, 1999 (9) SCC 596, the Hon'ble Supreme Court has observed as follows:-

"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.

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."

[Emphasis added]

In the case of ***Gopal Singh vs. State Cadre Forest Officers' Assn. and others***, (2007 (9) SCC 369), the Hon'ble Supreme Court observed as follows:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

4. Thus, on the basis of the above citations and observations made hereinabove, we come to the conclusion that it was not open to the review applicant to question the decision taken by this Tribunal. In fact, the applicant could have only pointed out any error apparent on the face of record, which has not been done in any of the paras from 1. to 9. taken in the Review Application. As such this Review

Application is devoid of merit and the same is accordingly dismissed.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/