

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. RA 350/00001/2016
MA 350/00011/2016
CPC 350/00023/2016
(OA 1159 of 2013)

Date of order : 13.2016

Present: Hon'ble Ms.Bidisha Banerjee, Judicial Member
Hon'ble Mr. P.K.Basu, Administrative Member

PRASANTA DUTTA & ORS.

VS

UNION OF INDIA & ORS.

For the applicants : Mr.A.Chakraborty, counsel

For the respondents : Mr.B.L.Gangopadhyay, counsel

O R D E R

Ms.Bidisha Banerjee, J.M.

The order passed in the OA was that the respondents shall consider the case of the applicants for change of category from Helper to Electrical as they have duly applied for, if vacancy was available in the category they have chosen, and such order had to be passed within three months from the date of communication of the order and if no vacancy was available order would be passed within one month of occurrence of vacancy.

2. The respondents in the OA have preferred the RA on the ground that since huge number of vacancies were available in the Trackman category causing a serious problem in day to day running of trains, the respondents would honour the order of the Tribunal at their free time on fulfilment of all the vacancies of Trackman in Sealdah Division.

3. The review is also sought for on the ground that although it was recorded in the order that the Id. Counsel for the respondents assured that if any vacancy arose in the Helper to Electrical, the applicants would be duly considered, such assurance was not based upon any instruction from the Railways.

4. We have heard Id. Counsel for the Railways.

5. The ingredients under which power of review is exercisable is no more res-integra. The Hon'ble Apex Court in **State of West Bengal & Ors. Vs. Kamal Sengupta and Anr. [2008 (3) AISLJ 209]**, dealing with the power and jurisdiction to review an order have summarised as under :

- (i) Power of Tribunal to review is akin to Order 47 Rule 1 CPC read with Section 114,
- (ii) Grounds enumerated in Order 47 Rule 1 to be followed and not otherwise,
- (iii) Any other sufficient reason appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) Order cannot be reviewed on the basis of subsequent decision/judgment of co-ordinate larger Bench or superior Court,
- (v) Adjudication with reference to material which was available at the time of initial decision. Subsequent event/development is not error apparent.
- (vi) Mere discovery of new/important matter or evidence not sufficient ground for review. The party has to show that such matter or evidence was not within its knowledge and even after exercise of due diligence, the same could not be produced earlier before the Tribunal.

The Apex Court again in **Gopal Singh vs. State Cadre Forest Officers' Association & Ors., [(2007) 2 SCC (L&S) 819]**, has held that "a Tribunal cannot sit over its own judgment as an appellate authority." It cannot write a second order. In a review reasons have to be given why a review is justified. Error apparent on the face of the record has to be justified.

6. In the instant case we find that the order which is sought to be reviewed in this R.A was passed in the open Court after hearing the parties. It was an oral order. In **Vinod Kumar -vs- Banaras University [(1988) 1 SCC 80]** relying on the observations of Bose, J. in **Surendra Singh -vs- State of U.P. [AIR 1954 SC 194]**, the Hon'ble Court in regard to "oral orders" held that "as soon as the judgment is delivered that becomes the operative pronouncement of the Court" and "that the judgment to be operative does not await signing thereof by the Court."

Therefore, upon any omission, the same could have been pointed out by the respective parties then and there. It cannot constitute a ground for review.

7. Further there was no error apparent on the face of the record and no discovery of new fact or evidence which would require us to review the order.

8. In this connection it would also be profitable to place reliance on the decision of the **FULL BENCH** of the Hon'ble Andhra Pradesh High Court rendered in the case of **G.Narasimha Rao vs. Regional Joint Director of School Education, Warrangal & Others, 2005(4) SLR 720**, relevant portion of which is quoted hereinbelow :

"Keeping the above guide lines in the background of the case, we have to see whether the Tribunal can entertain such review as and when approached with the plea of discovery of new and important fact or evidence; which was not brought to the notice of the Tribunal while passing the order which resulted in miscarriage of justice. If so, whether the Tribunal can entertain such review and can condone the delay by taking the aid and assistance of sub-section (3) of Section 21 of the Act which enables the Tribunal to entertain the original application. It is well settled that exercise of power will be circumscribed by the relevant statutory provisions and the rules made thereunder."

While referring to Rule 19 it held :

"Rule 19 is couched in negative form and disables the person from seeking review under Section 22(e)(f) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay under Section 21 of the Act is applicable only to the applications filed under Section 19, but the same cannot be made applicable to the review sought under Section 22(3)(f). Sub-section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Government. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the premise that Limitation Act is made applicable in view of sub-section (2) of Section 29 of the Limitation Act."

In the view we have taken, we answer the reference holding that the Administrative Tribunals Act and the Rules made thereunder are impliedly infer that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either sub-section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act."

9. Further in the case of **K.Ajit Babu v. Union of India, (1997) 6 SCC 473** : [1997(4) SLR 775 (SC)] the Hon'ble Supreme Court held as under :

".....The right of review is not a right of appeal where all questions decide are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 the Code of Civil

Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all time to come. Public policy demands that there should be end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. A right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

10. On microscopic examination of the entire matter with reference to the law laid down by the Hon'ble Apex Court as well as the Hon'ble Andhra Pradesh High Court, referred to above we find no justification to review the order and as such this R.A is dismissed. No costs.

11. Inform the parties accordingly.

(P.K.BASU)
MEMBER (A)

in

(BIDISHA BANERJEE)
MEMBER (J)