

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

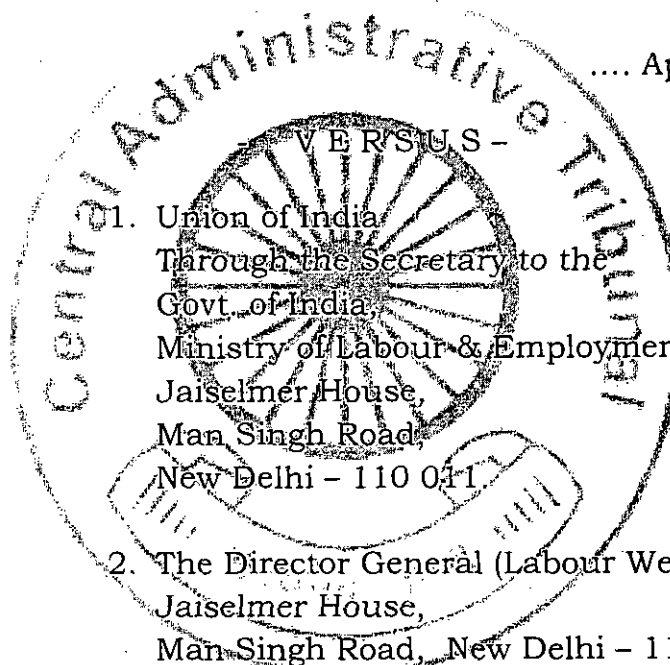
R.A/350/0026/2019
(O.A/350/456/2016)

Date of Order: 06.11.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Smt. Tanusree Hajra (Chandra),
Wife of Chandra Sekhar Hajra,
Aged about 42 years,
Working as Staff Nurse,
Bankura, SCMMU, Jhalda, Purulia,
West Bengal, Residing at 3 Bye Lane,
North Lake Road,
Rabindrapally, Purulia,
West Bengal, Pin - 723 101.

.... Applicant



- VERSUS -
1. Union of India
Through the Secretary to the
Govt. of India,
Ministry of Labour & Employment,
Jaiselmer House,
Man Singh Road,
New Delhi - 110 011.
 2. The Director General (Labour Welfare),
Jaiselmer House,
Man Singh Road, New Delhi - 110 011.
 3. The Welfare & Cess Commissioner,
Ministry of Labour & Employment,
Labour Welfare Organization,
234/4, AJC Bose Road,
5th Floor, 2nd MSO Building,
Nizam Palace, Kolkata - 700 020.
 4. The Medical Officer (Contract),
Static-cum-Mobile Medical Unit,
Jhaldah, Purulia,
Labour Welfare Organization,
Ministry of Labour,
Govt. of India, Namopara,
Jhalda, Purulia, Pin : 723 201.

... Respondents

heli

For The Applicant(s): Mr. S. K. Datta, counsel

For The Respondent(s): None

ORDER

(DISPOSED OF BY CIRCULATION)

Per: Dr. Nandita Chatterjee, Member (A):

This R.A bearing No. 350/0026/2019 has been filed on 28.10.2019 by the applicant seeking review of the order dated 26.09.2019 passed in O.A. 350/456/2016. The operative portion of the order is as follows:

“6.6. The applicant's claim for placement of her transfer proposal before a Placement Committee is illogical. The applicant is not a part of mainstream Ministry. She is attached with a specific Labour Welfare Scheme and would be guided by the guidelines for transfer posting as at Annexure A-6 to the O.A. The respondents have made it extremely clear that her orders for transfer were issued with the approval of the Director General, Labour & Welfare of the concerned Ministry, an authority named in para 2 of the said guidelines as competent to direct such transfer.

In ***N.K. Singh v. Union of India, (1995) 1 LLJ 854*** and ***Abani Kanta Roy v. State of Orissa, 1995 Supp (4) SCC 169***, it has been held that, unless the decision to transfer is vitiated by malafide, infraction of any professed norms or principle governing the transfer, judicial scrutiny is not called for.

In the instant case, the applicant has been moved after a tenure of 15 years but her colleague staff nurse has joined the place of transfer without any protest. Hence, the allegation of malafide fails. The competent authority has ordered the transfer as per the transfer guidelines after observing the professed norms. Accordingly, following the above ratio, the applicant's challenge to transfer does not succeed.

6.7. We are inclined to agree with the Ld. Counsel for the respondents that no government servant drawing salary from State exchequer should be allowed to continue in a post where the scope of her service is limited but should be posted where her services should be utilized optimally. Ld. Counsel for the respondents would urge that the applicant's contribution to the Labour Welfare Scheme would stand suitably enhanced if she renders her services in the Central hospital.

hch

7. The claim fails. The applicant should join her transferred place of posting with immediate effect, failing which the respondents are at liberty to act as per law.

The interim order stands vacated accordingly.”

2. Upon a detailed perusal of the Review Application No. 350/0026/2019, it transpires that the applicant has based her claim for review on the purported views of the Tribunal at the time of the final hearing. The applicant would submit as follows:

“Applicant states that the Original Application was finally heard on 26.09.2019 when the Hon'ble Tribunal was not inclined to consider the matter on merit but was of the view that in view of the health condition of the applicant and considering the fact that others as stated in the original application were retained at the same station for a long time, applicant should make a detailed representation enclosing the medical documents in support of her illness and the respondents shall consider the same for posting of the applicant at any place near to Jhalda. This Hon'ble Tribunal clearly expressed its views that when the applicant is suffering from various ailments, it is not proper and would be of no fruitful purpose in transferring the applicant to Dhulian in the District of Murshidabad which is far away from Jhalda and where the applicant has to perform shifting duties.”

3. The applicant has advanced, inter alia, the following grounds to substantiate her prayer:

“a) For that there is good and sufficient reason for review of the Order passed in O.A No. 350/00456 of 2016 as it is a clear case of error apparent on the face of the record.

b) For that the order was passed treating it as a case of reserving the case for final order whereas in the instant case views were already expressed at the time of hearing and the matter was adjourned for detailed order at chamber.

c) For that there is a difference between CAV and chamber dictation which was not considered while passing the order dated 26.09.2019.”

hew

4. We have carefully considered the arguments of the applicant as averred in the review application and would hereafter examine the scope of review based on such arguments.

Order 47, Rule 1, CPC lays down the scope of review of an order as follows:

"Any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which 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 judgment to the Court which passed the decree or made the order."

Accordingly, a review is maintainable on the following grounds:

- i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his 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 Hon'ble Apex Court, in the case of **Gopal Singh vs. State Cadre Forest Officers' Assn, and Others**, (2007)9 SCC 369 and in **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma**, (1979) 4 SCC 389, had ruled that there are definite limits to the exercise of the power of review.

Upon further reference to the ratio in **Parsion Devi & Ors vs Sumitri Devi & Ors** (1997) 8 SCC 715, and in the **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.**, reported in (2008) 8 SCC 612, the principle for considering a review application is summarised 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.

heli

- (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.
- (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.

5. The principal argument of the applicant while claiming review of the order dated 26.09.2019 issued in O.A 350/456/2016 is that the orders of the Tribunal clearly suffers from errors apparent on the face of the record. No errors apparent on the face of the record have been specified. The applicant has referred to certain oral remarks of this Tribunal purportedly made during hearing. No such remarks are on record. Both members of the Division Bench have agreed to the order, and, hence, if any one of the members had volunteered to observe as claimed by the applicant, there would be a note of dissent which is not forthcoming in this case. Further, as both the Members of the Division Bench have agreed on the contents of the order, it is not a reasonable proposition to

hah

claim that the members of the Tribunal had articulated distinctly different views during the hearing.

Incidental remarks, if any, are to be treated as obiter and it is a settled principle that such remarks are not to be construed as ratio decidendi. Further, a matter deferred for chamber dictation does not preclude examination on merit and both sides were heard extensively prior to deciding on this matter. The applicant has not brought before us any established legal principle or ratio that prevents examination of a matter on merit even if deferred for chamber dictation.

6. The applicant would aver that the Tribunal had purportedly agreed to permit the applicant to represent to the authorities for consideration of her personal difficulties. In the event the applicant joins her place of posting on transfer, there is nothing that prevents her from preferring a detailed representation to the authorities citing her medical concerns and other personal issues.

7. It is a settled principle of law that a matter arising from the cause of action triggered by transfer calls for judicial intervention if vitiated by malafide or infraction of any professed norms or principles governing such transfer. As the transfer order has not been found to be tainted by malafide or issued upon violation of professed norms or policy, the scope of judicial intervention does not arise.

hew

This Tribunal reiterates its views as held in orders dated 26.09.2019 in O.A 350/456/2016 on that, while opting for service paid for by the State Exchequer, it is the duty of employee concerned to render optimum performance. Sympathetic consideration towards an employee who insists on continuing in a sinecure position purely on personal grounds would, in our view, be completely misplaced.

8. We are not convinced that there are any errors apparent on the face of records of the order dated 26.09.2019 issued in O.A 350/456/2016. Consequently, the Review Application fails.

There will be no orders as to costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

ss