

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**R.A/350/00022/2019
(OA/350/00886/2016)

Date of Order: 18.10.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative MemberSumit Jaiswal
Vs.
N.E. F. Railway

For The Applicant(s): In Person

For The Respondent(s): None

ORDER**(DISPOSED OF BY CIRCULATION)**

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

This R.A has been filed on 25.09.2019 by the applicant seeking review of the order dated 13.09.2019 passed in O.A 350/886/2016.

The operative part of the order passed in the O.A 350/886/2016, reads as follows:

"5. Respondents have filed a supplementary affidavit on 14.08.2019 in which they would aver that the applicant has received a total of eight sheets plus all the RUDs, namely thirty three sheets from the concerned respondent authorities and that the applicant's acknowledgement dated 12.07.2018 is on record as at Annexure-R/2. The respondents would also refer to the inquiry report finalized on 31.03.2017 wherein the inquiry authority has stated that "listed RUDs and supplied additional documents are enough to examine and cross examine the DWs and PWs by the CO", to which, the applicant would vociferously contend that in the preliminary hearing dated 07.02.2014, the proceedings recorded that the additional listed documents have been examined and found to be relevant except item No. (j) of the 21 additional documents sought for by the applicant/charged officer.

Ld. Counsel for the Respondents would also submit that the Disciplinary Authority had issued a disagreement note to the applicant.

6. The applicant, during the course of hearing, filed his reply to the supplementary affidavit and vociferously agitated that, without the work distribution order dated 21.05.2011, which refers to the particular date on which the alleged misconduct had taken place as also the original complaint, he is prejudiced from suitably defending the charges alleged against him.

7. We find that the applicant has an opportunity to reply to the disagreement note. In addition, we hereby accord the applicant liberty to prefer a comprehensive representation to the Disciplinary Authority within 3 weeks of receipt of a copy of this order whereby he may articulate issues, which in his opinion, would so prejudice him as to prevent him from suitably defending himself against the allegations made in the charge memorandum. We would also direct the Disciplinary Authority that, in the event such representation is preferred by the applicant, the said authority should dispose of the same after due application of mind, in accordance with law and convey his decision to the applicant on each of the issues raised by the applicant by a reasoned and speaking order.

The Disciplinary Authority should dispose of the representation, if received at his end, within a period of 12 weeks from the date of receipt of such representation from the applicant.

8. The respondent authorities are, however, at liberty to conclude the disciplinary proceedings as per Rules.

9. With these directions the O.A. is disposed of. There will be no orders as to costs.

M.A.No. 255/2018, arising out of O.A. No. 886/2016, praying for vacation of interim order is disposed of accordingly."

2. Upon a detailed perusal of the Review Application, 350/22/2019, it transpires that the applicant has only repeated his contentions as advanced in the Original Application No. 350/886/2016, with factual reiteration and reemphasis on violation of the principle of natural justice.

The applicant has not brought before us any grounds for review. He has not highlighted any error apparent on the face of record of the order of the Tribunal dated 13.09.2019, nor has brought the discovery of any new or important matter or evidence that was not within his knowledge and hence could not be produced before the Tribunal during hearing of the Original Application.

3. Order 47, Rule 1, CPC laid down the scope of review of the 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

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(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.

4. 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.
- (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

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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.

6. As the applicant has failed to furnish before us any error apparent on the face of the record, justifying consideration under Section 22(3)(f) of the AT Act or any new important matter or evidence which was not within his knowledge at the time of hearing of the Original Application No. 350/886/2016, we find the Review Application, bearing no. 350/0022/2019, does not deserve consideration and, hence, is dismissed as being devoid of any merit.

7. There will be no orders as to costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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