

(2019) 08 CAT CK 0033

In the Central Administrative Tribunal

Case No : Review Application No. 140 Of 2019 In Original Application No. 3970 Of 2013

Bhajan Lal

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(2)(f), 22(3)(a), 22(3)(b), 22(3)(c), 22(3)(d), 22(3)(e), 22(3)(f), 22(3)(g), 22(3)(h), 22(3)(i)
Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1
Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 9.21

Citation : (2019) 08 CAT CK 0033

Hon'ble Judges : Pradeep Kumar, Member (A), Ashish Kalia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Through the medium of this Review Application (RA), filed under Order XLVII, Rule (1) of Civil Procedure Code, read with Section 22 (3) (f) of the Administrative Tribunals Act, 1985, the review applicant (original applicant) is seeking review of this Tribunal's order dated 09.05.2019 in OA No.3970/2013, vide which the said OA was dismissed.

2. In support of his prayer for review of the Tribunal's order dated 09.05.2019 the review applicant has urged the following important grounds:

2.1 The inquiry officer who was working in Vigilance Branch could not be impartial, independent and uninfluenced inquiry officer and hence he could not have been nominated as an inquiry officer as held by this Tribunal in S.K. Saxena and Y.P. Singh (OA No.1534/2012).

2.2 The inquiry officer did not comply with Rule 9.21 of Railway Servants (Discipline & Appeal) Rules, 1968 which provides that "if the railway servant has

not examined himself, generally examine him on the circumstances appearing against him in the evidence for the purpose of enabling the railway servant to explain circumstances appearing in the evidence against him."

3. We have perused the RA and also considered the grounds raised therein. It appears that under the garb of review the review applicant is trying to re-argue the matter which is not permissible. If in the opinion of the review applicant the order passed by the Tribunal is erroneous, remedy lies elsewhere and certainly review is not the remedy.

4. A reading of the RA gives an impression as though an appeal has been filed against the order of this Tribunal dated 09.05.2019 in OA No.3970/2013. All the grounds raised in the RA have already been considered by the Tribunal while adjudicating the OA. The order dated 09.05.2019, sought to be reviewed in regard to complying with the requirement of natural justice, clearly noted that the applicant has pleaded that the vigilance officer cannot be nominated as EO and in this regard he placed reliance on the decision of the Hon'le Supreme Court in *Union of India & Others v. Prakash Kumar Tandon*, [(2009) 1 SCC)L&S) 394]. The fact of the relied upon case were noted by the Hon'ble Apex Court as under:

"12. The disciplinary proceedings were initiated only after a raid was conducted by the Vigilance Department. The enquiry officer was the Chief of the Vigilance Department. He evidently being from the Vigilance Department, with a view to be fair to the delinquent officer, should not have been appointed as an enquiry officer at all."

4.1 In this regard, the applicant had also relied upon a judgment in *Union of India & Anr. v. Surinder S. Batra* (supra). The relevant part of the judgment as observed by the Hon'ble High Court of Delhi is reproduced below:

"We have heard the counsel for the petitioners. The Tribunal after placing reliance on one of its decisions in the case of *Y.P.Singh vs. UOI*, O.A. No.1534/2012 dated 17.01.2014 took a view that in the departmental enquiry initiated at the instance of the vigilance department, the Enquiry Officer should not be from the same vigilance department. We find no infirmity in the view taken by the learned Tribunal. The view of the Tribunal also finds support in the decision of the Apex Court in the case of *UOI vs. Prakash Kumar Tandon*, (2009) 1 SCC L&S 394. In any event, the Tribunal has not completely foreclosed the right of the petitioners but has given an opportunity to conduct a de novo enquiry as per law. Certainly if the petitioners are convinced that there is a need to conduct a de novo enquiry then they shall proceed in the matter within a period of two months from the date of this order. It is ordered accordingly."

5. In this regard, the Tribunal had noted that while the vigilance inspection was carried out by a team from Vigilance Directorate of Railway Board, the EO was an official who was posted in the vigilance department of Northern Railway. These two offices work under the separate Administration and, therefore, the EO was in no way connected with the vigilance inspection. The records of the enquiry, as

were presented by the applicant and the respondents clearly established that full opportunity was afforded to the applicant.

6. In respect of the two officials for whom the applicant had sought the statements, given to the Railway Board vigilance, it is noted that in respect of those two statements, EO passed following orders on 23.02.2010 and it was signed by applicant also as acknowledgement:

"However CO has not indicated the proper relevancy of documents with the charge as well as the custodian of the documents but in view of natural justice both of the items are permitted by IO."

6.1 Moreover, the applicant had cross-examined them including other witnesses.

7. On conclusion of the enquiry the EO had also put-forth the mandatory questions relating to the duties of SM in general as well as in connection with the remittance of the earnings and specifically in respect of daily earnings for 29.06.2006 and 30.06.2006 which were not remitted to the cash office.

8. Existence of an error apparent on the face of the record, is sine qua non for review of an order. The review applicant has failed to bring out any apparent error on the face of order under review or any new point or any other sufficient reason enabling us to review the order.

9. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of State of West Bengal & others Vs. Kamal Sengupta and another, [2008 (3) AISLJ 209] stating therein that "the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision."

At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

"(i) The power of 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) of 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 specific grounds

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (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 a larger bench of the Tribunal or of a superior court

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) 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.

(ix) 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."

10. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed in circulation. No costs.