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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st JANUARY, 2025

IN THE MATTER OF:

+ **W.P.(C) 17309/2006**

YOGENDER KUMAR PATHAK Petitioner

Through: Mr. M.K. Bhardwaj & Ms. Alisha Saini, Advs.

versus

UOI & ORS. Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J

REVIEW PET. 363/2024 & CM APPL. 58305/2024

1. CM APPL. 58305/2024 has been filed by the Petitioner for condonation of delay in filing the review petition.
2. The review petition has been filed after a delay of 647 days, which according to this Court, has not been properly explained. However, instead of dismissing the review petition only on the ground of delay, this Court is inclined to consider the case on merits.
3. REVIEW PET. 363/2024 has been filed by the Petitioner seeking review of the Judgment dated 25.11.2022 dismissing the writ petition in which the Petitioner herein sought to challenge the Order dated 26.09.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi wherein Central Administrative Tribunal (*hereinafter referred to as "CAT"*)



in O.A. 2115/20003 had rejected the Petitioner's challenge to a letter dated 09/14.07.2003 issued by the Respondents.

4. Shorn of unnecessary details, the facts of the case reveal that the Petitioner joined the Railways as a Khallasi/diesel cleaner on 09.07.1981 and he was promoted as Senior Khallasi/Khallasi Helper on 01.01.1988 as a result of upgradation of the post.

5. It is stated that on 30.04.1986, the Respondents initiated a proposal to install a new electric loco shed at Tughlakabad, Kota Division of the Western Railway. It is stated that the Petitioner sought a transfer to the newly installed loco shed on personal grounds, i.e., 'on own request' basis which was accepted and the Petitioner was posted in a new establishment in a lower grade, i.e., as a Khallasi on 19.01.1989.

6. It is stated that the Respondents invited applications from the employees serving in the Railways for transfer to the newly installed loco shed on the administrative grounds. It is stated that the Petitioner, though had already been transferred to the loco shed, made request to consider his request for transfer not 'on his request' but transfer 'on administrative grounds', but no decision had been taken on the said request.

7. The Petitioner sought promotion as Senior Khallasi, the post in which he was serving prior to his transfer. It is stated that the Petitioner took a trade test for the post of Fitter Grade-III. He successfully passed the said test and was placed at Serial No.25 in the list of selected candidates and was promoted to Fitter Grade-III on 03.03.1990.

8. It is stated that a provisional seniority list was made on 09.02.1990 and the Petitioner was placed at Serial No.25 in the seniority list. It is stated that representations were received against the provisional seniority list and a



final seniority list was drawn *vide* office Order dated 13.07.1991. The Petitioner's seniority was revised. He was found ineligible for promotion to the post of Fitter Grade-III as per the corrected seniority list. Resultantly, the Petitioner was reverted to the original post of Khallasi *vide* Office Order dated 20/23.07.1991. The reversion order was challenged by the Petitioner before the CAT and the revision order was set aside *vide* Order dated 02.01.1990. The Petitioner continued working against Fitter Grade-III. The Petitioner took the examination of Fitter Grade-II but was not promoted.

9. O.A. 1723/1991 which had been filed by the Petitioner before the CAT challenging his reversion was disposed of on 01.10.1996. The CAT directed the Respondents to consider the case of the Petitioner for promotion to Fitter Grade-II. The Order of the Central Administrative Tribunal was considered by the Respondents and the Petitioner's request for Fitter Grade-II was rejected for the reason that the promotion of the Petitioner to Fitter Grade-III was on the basis of a false declaration. The Petitioner was not reverted to the post of Khallasi because of the stay passed by the CAT in O.A. No.1723/1991. The said rejection order was challenged by the Petitioner in O.A. 1362/2000 which was disposed of by the CAT *vide* Order dated 11.11.2002 with a direction to the Respondents to consider the case of the Petitioner.

10. The request was rejected again by the Respondents *vide* letter dated 09/14.07.2023. The rejection was challenged by the Petitioner by filing O.A. No.2115/2003 before the CAT, which was dismissed by the CAT on 26.09.2005 which was the subject matter of the challenge in the writ petition.

11. The Tribunal while dismissing O.A. No.2115/2003 placed reliance



on Rule 312 of the Indian Railways Establishment Manual which stipulates that in the case of ‘on request’ transfer, the transferee is to be placed at the bottom of the seniority list. The seniority list of the Petitioner had been revised from Serial No.25 to Serial No. 157 according to the rules therefore the Tribunal was of the opinion that the Petitioner fell outside the zone of consideration and therefore had been reverted to the post of Khallasi. The reversion/demotion had been stayed by the Central Administrative Tribunal. The principal ground of challenge in the writ petition was that the transfer of the Petitioner ought to have been considered on the ‘administrative grounds’ without any loss of seniority and not on ‘on his own request’. The said petition has been rejected by this Court.

12. This Court in the said judgment, review of which is being sought by way of the present Petition, held that the Petitioner was working as a Senior Khallasi when he sought transfer on his own request. The post of Senior Khallasi is only as an intermediary grade post. Since the Petitioner sought a transfer on his own request, he could not be transferred to the post of Senior Khallasi. The Petitioner was therefore put at the bottom of the Seniority List as Khallasi. It cannot be said that the Petitioner was not aware of the rule position governing seniority in case of transfer on request. Since the Petitioner himself sought transfer on request for better career advancement and promotional benefits, he cannot go back in time and change the course of things when things did not take a favourable turn for him.

13. This Court also held that had the Petitioner been transferred on administrative grounds, the Petitioner would not have lost his seniority. The application given by the Petitioner to consider his transfer on ‘administrative grounds’ and not ‘on own request’ was not considered and had the Petitioner



been transferred on administrative grounds he would have continued as Senior Khallasi, as those transferees who had been transferred on administrative grounds did not lose their seniority and were placed above the Petitioner in the new division. This Court held the order passed by the Tribunal holding that the letter dated 09/14.07.2003 by which the case of the Petitioner was rejected, is a detailed reasoned order which does not warrant any interference.

14. The learned Counsel for the Petitioner states that this Court has not considered the effect of Rule 306 of the Indian Railway Establishment Manual which states that the candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of promotion and since the Petitioner had been selected for trade test for Fitter Grade-III on 13.02.1990 and for the post of Fitter Grade-II on 02.01.1994, the Petitioner could not have been reverted. Attempts have also been made to state that this Court in the impugned judgment has held that the Petitioner gave a false declaration which led to his appointment of Fitter Grade-III without stating as to how the declaration given by the Petitioner could be termed as a false declaration, which amounts to error apparent on the face of the record. The Petitioner is making out a completely new case which was not argued when the writ petition was heard and disposed of.

15. It is well settled that a review cannot be an appeal in disguise. The Apex Court in Haridas Das v. Usha Rani Banik, (2006) 4 SCC 78, has held as under:-

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make



*such order thereon as it thinks fit”. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in *Thungabhadra Industries Ltd. v. Govt. of A.P.* [(1964) 5 SCR 174 : AIR 1964 SC 1372] held as follows : (SCR p. 186)*

“[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the



record would be made out.”

16. Similarly, the Apex Court in Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170, has held as under:-

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] speaking through Chinnappa Reddy, J. has made the following pertinent observations:

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres 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 manner of errors committed by the subordinate court.' " (SCC pp. 172-73, para 8)"



17. The Petitioner has argued a completely new case which cannot be permitted in a review. The Petitioner has not been able to point out any error apparent on the face of the record. The ground on which the Petitioner's writ petition has been dismissed is that the Petitioner sought transfer 'on his own request' and he was not transferred on 'administrative grounds' and therefore his seniority was revised in the lowermost rank in the loco shed and those persons transferred on 'administrative grounds' had been placed senior to the Petitioner. The arguments raised by the Petitioner are on merits which can be agitated only in an appeal and not in a review petition. In the absence of any error apparent on the face of record, this Court is not inclined to entertain the present review petition.

18. The review petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

C.HARI SHANKAR, J

JANUARY 31, 2025

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