

GAHC010081322022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./79/2022

ASHOK BHATTACHARJEE
S/O SANTOSH BHATTARCHARJEE
RESIDENT OF SALBAGAN (NEAR LEELA GAS GODOWN) PO , PS AND DIST
BONGAIGAON, ASSAM, 783380

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE GENERAL MANAGER, N.F RAILWAYS, MALIGAON

2:THE SR. DIVISIONAL COMMERCIAL MANAGER

RANGIA DIVISION
N.F RAILWAY
RANGIA

3:THE DIVISIONAL FINANCE MANAGER
RANGIA DIVISION
N.F RAILWAY
RANGI

For Petitioner(s) : Mr. B.J. Mukherjee, Adv.

For Respondent(s) : Mr. A.K. Dutta, CGC (R-1 to 3).

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KAKHETO SEMA

ORDER

08.05.2023

[Sandeep Mehta, CJ]

The applicant/writ petitioner has filed this instant application under Order 47 Rule 1 of the Code of Civil Procedure read with Section 114 of the CPC seeking review of the order dated 21.03.2022 passed in WP(C) No.699/2022 preferred by the petitioner.

2. The applicant is aggrieved by the proposed recovery of alleged excess amount of travelling allowance paid to him. The Central Administrative Tribunal (CAT), rejected the Original Application preferred by the applicant by order dated 07.12.2021, which was unsuccessfully assailed by the applicant by filing the WP(C) No.699/2022, which too stands dismissed by order dated 21.03.2022. Through this application, the petitioner seeks review of the order dated 21.03.2022 passed by this Court.

3. Mr. B.J. Mukherjee, learned counsel for the review applicant urged that the view taken by the Division Bench in rejecting the writ petition of the petitioner is erroneous inasmuch as, even though the judgment rendered by the Hon'ble Supreme Court in the case of ***Avtar Singh v. State of Punjab*** though cited was not considered while deciding the writ petition. It was further contended that relevant circulars/notifications issued by the Railway Board were also not considered by the Division Bench. On these grounds, learned counsel Mr. Mukherjee implored the Court to accept the application for review and pass the necessary consequential directions restraining the employer railways from effecting recovery as above.

4. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the applicant and have gone through the order under review and the order passed by the learned Tribunal and so also the pleadings in the review application.

5. A bare perusal of the pleadings would indicate that no ground has been set out by the applicant that any of the arguments advanced on his behalf were not considered by the Division Bench while deciding the writ petition. The basic ground of seeking review is that the

judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. v. Rafiq Masih(White Washer) etc.***¹ and the Railway Board's notification dated 22.06.2016 were not considered while dismissing the writ petition. We find that the said argument is *ex facie* fallacious because even in the pleadings of the review application, there is no such averment that the judgment referred to above or the notification dated 22.06.2016 were cited and were omitted from consideration.

6. Furthermore, we find a stark distinction in the circumstances prevailing in the case of ***Rafiq Masih*** (supra) and the said judgment is totally distinguishable because in the said case, excess amounts were paid to the employees on account of the mistakes committed by the concerned authorities. However, in the present case, it is the applicant who had drawn excess travelling allowance contrary to the rules and regulations of the Railways, which make the travelling allowance applicable only for a duty beyond the radius of 8 KM from the headquarter. Thus, it is a case of the employee irregularly drawing the travelling allowances contrary to his entitlement and hence, the ratio of the Supreme Court judgment in the case of ***Rafiq Masih*** (supra) would not apply to the case at hand.

7. That apart, there cannot be any two views on the proposition that a final order passed in any case can be subjected to review only if the same suffers from an error apparent on the face of the record. By no stretch of imagination, can this Court be satisfied that such a situation prevails in the present case.

8. Hence, we find no reason to exercise the powers of review so as to modify the order dated 21.03.2022 passed by the Division Bench in WP(C) No.699/2022. Accordingly, the review application fails and is dismissed as being devoid of merit.

Sd/- Kakheto Sema
JUDGE

Sd/- Sandeep Mehta
CHIEF JUSTICE

Comparing Assistant

¹ (2015) 4 SCC 334