



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

REVIEW PETITION (C) No. 24 OF 2023
IN W.P(C) No. 4841 OF 2021

1. Purbanchaliya Rail Karmi Parisad

Represented by the Present Chief General
Secretary- Shri Indreswar Baruah, Registered
office at Maligaon, Guwahati-781011, District-
Kamrup(M), Assam

2. Shri Indreswar Baruah

Aged about 66 years,
Son of Late Golap Chandra Baruah
Presently holding the post of Chief General
Secretary of the Purbanchaliya rail Karmi
Parishad Head & registered Office at Gochala,
Railway Chatol Gate, N.F. Railway, Maligaon,
P.O & P.S. Maligaon, Guwahati-11, District-
Kamrup(M), Assam

.....Review Petitioners

-Versus-

1. The Union of India

Represented by the Secretary, Ministry of
Railways, Rail Bhawan, New Delhi, PIN-110001

2. The Chairman Railway

Ministry of Railways, Govt. of India, rail Bhawan,
New Delhi, PIN- 110001

3. The Advisor (IR)

Railway Board, Rail Bhawan, New Delhi, PIN-
110001

4. The General Manager (P)

N.F. Railway, Maligaon, Guwahati- 781011
District- Kamrup(M), Assam

5. The Chief Personal Officer

N.F. Railway, Maligaon, Guwahati- 781011,
District- Kamrup(M), Assam

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioner(s) : Mr. A.K. Purkayastha, Adv.
: Mr. S. Sharma, Adv.

For the Respondents : Mr. D. J. Das, CGC

Date of Hearing & Judgment : **20.02.2023**

JUDGMENT & ORDER

(SOUMITRA SAIKIA, J)

This review petition is directed against the Order dated 05.01.2022 passed by this Court in W.P(C) No. 4841/2021 whereby the writ petition preferred by the review petitioner was dismissed.

2. The facts in brief are that the review petitioner is a registered Trade Union and its members are employed under the Northeast Frontier Railways. In pursuance to an order/instruction of the Railway Board, Ministry of Railways, Government of India dated 03.05.2006 which was in respect of recruitment in Group-D category posts in the railways from the Staff working in quasi-administrative office/organization connected with the Railways, wherein it was decided that the Railways with the approval of the General Manager may consider absorption of those staff of quasi-administrative offices/ organizations who were on roll as on 10.06.1997 and are still on roll subject to fulfillment of other conditions as laid down in the Board's letter.

3. In pursuance to the said order/instructions dated 03.05.2006, in the year 2010 on the request of two quasi-administrative offices/organizations of the NF Railways namely, N.F Railway Employees' Union and the N.F. Railway Mazdoor Union, sixty-eight employees were appointed. The petitioner Union also submitted a list of 24 employees for absorption in the Indian Railways which however, was denied by the Railway Authorities. Being aggrieved, the petitioner Union approached the CAT, Guwahati by filing Original Application being OA No. 040/00123/2014. The Tribunal vide its order dated 03.07.2015

directed the Railway Authorities to consider the case of the members of the petitioner Union for absorption in Group-D service as per the instructions of the Railway Board. Being aggrieved, the Railway Authorities challenged the order of the CAT, Guwahati before this Court by filing a writ petition being W.P.(C) No. 7709/2015. The said writ petition came to be dismissed by order dated 05.01.2016. Thereafter, the Railway Authorities by an order dated 17.02.2016 referring to the order of the CAT, Guwahati dated 03.07.2015 as well as the order of this Court dated 05.01.2016 in W.P(C) No. 7709/2015 arrived at a decision that, as a one-time measure, the employees in the quasi-administrative offices or the organizations shall be considered for appointment in Group-D posts, who were in the roll of such an organization for at least for a period of three years as on 10.06.1997. The Railways intimated all concerned to send their names and details of the staff working in quasi-administrative offices or organizations who fulfilled the prescribed qualification and were within the prescribed age limit. The review petitioner/Union was not intimated by the Railways to submit any such names as according to the Railways, the Union is not a quasi-administrative offices or organizations of the Indian Railways. Regarding the status of the review petitioner/ Union, it was stated by the Railways that the Purbanchaliya Rail Karmi Parishad (hereinafter referred to as "*PRKP*") namely the review petitioner, was not an organization having the status of a recognized Trade Union in the Railways. It had contested in Secret

Ballot of the Railways in the year 2013 and received only 0.9% of the total votes cast, which was much below the required bench mark of 30% necessary for recognition as Trade Union in the Railways. Out of the total valid votes cast of 53,994, the PRKP Union had received only 577 votes and therefore, the Railways had not granted any status of quasi-administrative offices or organization to the PRKP and therefore, the staff engaged by PRKP cannot be considered for absorption in Group-D post of the Railways.

4. This order of the Railways came to be challenged before the CAT, Guwahati by the review petitioner by an Original Application being O.A No. 040/00205/2016. The CAT, Guwahati vide order dated 02.12.2019 came to the conclusion that the PRKP is not a quasi-administrative offices or organizations in the Railways and therefore it cannot be treated at par with the other two organizations namely, N.F. Railways Employees' Union and N.F. Railway Mazdoor Union and accordingly, dismissed the Original Application of the PRKP Union.

5. This order was assailed before this Court in W.P(C) No. 4841/2021. This Court vide order dated 05.01.2022 rejected the claim of the PRKP/Union that some of its members are working in the Railways and therefore, in that capacity it has a claim for being considered as a quasi-administrative office or organization of the Railways and accordingly, the writ petition was dismissed. This Court held that the petitioner Union is not a quasi-administrative office or

an organization and is not covered under the order/instruction dated 03.05.2006 and is therefore, not liable to get the benefit as visualized by them. This Court held that it may be a registered Trade Union but it is not recognized Trade Union by the Indian Railways and therefore, its candidature cannot be considered in terms of the order/instructions dated 03.05.2006. The relevant portion of the order is extracted below:

"The admitted position is that the petitioner Union is not a quasi-administrative office or organization of the Railways. It only rests its claim being a Trade Union where some of its members are working in Railways and, therefore, in that capacity, it makes a claim to be considered as a quasi-administrative office or organization of the Railways. This submission is totally misplaced.

Since the petitioner Union is not a quasi-administrative office or organization, it was not covered under the order/instruction dated 03.05.2006 and, therefore, it was not liable to get the benefit as visualized by them. Even the status of the petitioner as a Trade Union has been considered and rejected inasmuch as though it may be a registered Trade Union, but it is not a recognized Trade Union by the Indian Railways and, therefore, even in that capacity its candidature could not be considered in terms of the order/instruction dated 03.05.2006.

We find no infirmity in the speaking order dated 17.02.2016 or the order dated 02.12.2019 passed by the Central Administrative Tribunal in Original Application No.040/00205/2016. The writ petition is devoid of any merit and hence, the same is dismissed."

6. The present review petition has been filed seeking a review of the order dated 05.01.2022 passed in W.P(C) No. 4841/2021 on the following grounds:

(1) For that since certain most relevant and import facts and related question on law, were left out to be considered by this Hon'ble Division Bench as apparent on the face of record due to some bonafide mistake and inadvertent oversight on the part of the Review Petitioners, the

Hon'ble Division Bench may be pleased to interfere with the present Review Petition for dispensation of the substantive cause of justice and equity.

(II) For that once a particular relevant document pertaining to the basic subject matter of the Writ Petition vis-a-vis the issues involved there in, could not be brought to the Judicial notice of this Hon'ble Court at the time of adjudication of the Writ Petition due to lack of knowledge and unawareness of the said document despite their utmost diligence and promptness in pursuing their remedy since 2013, the entire matter needs to be re-examined having due regard to the newly discovered documents and any such consideration would enable the Review Petitioners to get their grievance redressed.

(III) For that even assuming that the Review Petitioners failed to substantiate their grievance and failed to get any relief for redressal of their grievances but despite the dismissal of the said Writ Petition, by this Hon'ble Court is otherwise, empowered to exercise the power of Review in a given situation with a view to prevent the miscarriage of justice or to correct the grave and palpable errors as apparent on the face of the record and considering such apparent inability or incapability on the part of the Review Petitioners to bring on record the said document/record, the present Review Petition may be interfered with by this Hon'ble Division Bench, so that the substantive and complete justice may be dispensed with.

(IV) For that, although the Review Petitioners with all sincerity and bonafide expectation, pursued their remedy since 2013 and their grievances were examined by this Hon'ble Court to all possible extent but the said decision of the Court would have been otherwise had a particular relevant document/record been produced or brought to the Judicial notice of this Hon'ble Court by the Respondents considering

them to be the custodian of the said document and due to deliberate and unintentional non-production of the said document by the Respondent Authorities, the Review Petitioners apparently seem to have been deprived of justice and this Hon'ble Court was also not in a position to arrive at just decision due to non-production of the said document after taking into Judicial record to the Judicial notice of the said document/record. Hence, the Review Petitioners despite the dismissal of the Writ Petition, may be justified to seek necessary relief by preferring the present Review Petition.

(V) For that although this Hon'ble Division Bench as well as the L'd Central Administrative Tribunal on examination of the grievance of the Review Petitioners were pleased to adjudicate the issues and arrive at final decision but the Review Petitioners were unable to raise certain relevant questions in justification of their grievances with reference to a particular document which was neither in their possession nor was the said document placed on record by the Respondent Authorities at any point of time and the decisions so arrived at by this Hon'ble Court would have been otherwise had this document being taken into consideration by this Hon'ble Court and considering such extreme incapability or inability on the part of the Review Petitioners to produce the said document vis-a-vis the deliberate omission on the part of the Respondent Authorities to produce the Said document for Judicial consideration by this Hon'ble Court, the present Review Petitioners may be interfered with by this Hon'ble Court for fresh consideration.

(VI) For that even assuming that the matter was finally adjudicated and decided by this Hon'ble Court but apparently and admittedly, the most basic question as to whether in terms of the decision of the Railway Authorities, the existing Quasi Organization or Union are lawfully entitled to make recommendation in favour of their Staffs for absorption and as to whether the entitlement of those Quasi Organization/Unions can be

determined on the basis of Election held on 2013 notwithstanding the fact that the Process of Absorption was initiated and completed by long before 2013 Election and the aforesaid question could have been raised by the Review Petitioners and adjudicated and decided by this Hon'ble Court had a particular document or part of records could have been brought to the Notice of the Hon'ble Court by the Review Petitioners or could have been produced before this Hon'ble Court by the Respondent Authorities at any early point of time or at the time of hearing of the Writ Petition and since Review Petitioners were not aware of the said document and that too when they were wholly unable to produce the said document and/or when the Respondent Authorities deliberately omitted to produced the said document inspite of the same being in their Official custody and possession and considering the document to be a most relevant and material document for just decision, the present Review Petitioners may be considered by this Hon'ble Court leniently by taking a justice oriented approach so that the substansive and complete justice may be dispensed with and a just and appropriate relief may be granted to the Review Petitioners.

(VII) For that once a particular document apparently seems to be relevant for adjudication of the issues involved in the Writ Petition and since the Review Petitioners admittedly, were unaware of the said document vis-a-vis the decision taken by the Railway Ministry by way of issuing the aforesaid Communication and that too when the Review Petitioners could learn about the said Office Communication vis-a-vis the decision of the Railway Board only after the delivery of the Judgment and Order passed by this Hon'ble Court, such factual situation may justifiably lead to a reasonable conclusion that even after exercise of due diligence, an important and relevant document can be said to be not within the knowledge of the Review Petitioners so as to produce the same at the time when the Order was passed by this Hon'ble Court and any such logical conclusion would justifiably bring the present Review Petition

within the purview of the power of review to be exercised by this Hon'ble Court so that the appropriate relief may be granted to the Review Petitioners and the cause of justice may be dispensed with.

(VIII) For that once a particular question or issue seems to be apparently relevant for arriving at just decision and due to some bonafide and inadvertent oversight or unawareness of a particular fact on the basis of which the said question can be raised and answered, the said question could not be raised by the person seeking review of the Order and/or could not be adjudicated and answered by the Court at the time of passing the Order, such facts and situation would justify the said person to approach the Court and seek review of the Order passed by the Court and non-adjudication and non-examination of the said question by the Court in exercise of the power of review, in such given situation, would defeat the cause of substantive justice and the person who is need of justice would be denied of justice for the reason beyond his reach.

(IX) For that admittedly, the Railway Board took the Policy decision for absorption of the Staffs of Quasi Organization Union and the said Process of absorption was finalized by absorbing the eligible Staffs of some of those Quasi Organizations or Unions in 2010 long before the initiation of Election Process in terms of the decision of the Railway Board vide Communication / Notification dated 09.11.2006 and in such Case, obviously a question would arise as to whether the entitlement of any such Quasi Organization/Union in terms of the 2006 Policy decision of the Railway Board, can be determined on the basis of 2013 Election and that too when no any such Election for determining the eligibility of the existing Quasi Organization or Union, was held before initiation of Absorption Process during the period from 2006 to 2010 and hence the aforesaid Communication or Notification dated 09.11.2006 may be allowed to be produced and brought to the Judicial notice of this Hon'ble Court either by the Review Petitioners due to their unawareness and on

that point of view, the present Review Petitioners may be said to be within the purview and ambit of the power of Review of this Hon'ble Court and the Writ Court in such case may be said to be competent to exercise the inherent power of Review on in view of the settled position of law that the discovery of new or important matter or evidence which after exercise of due diligence, is found to be not within the knowledge of the Review Petitioners and the exercise of power of Review by this Hon'ble Court having due regard to the aforesaid circumstances preventing would invariably dispense with justice and equity.

(X) For that in any view of the matter, the Review Petition may be said or accepted to maintainable."

7. The learned counsel for the review petitioner has urged that there is an error apparent on the face of the record inasmuch as a particular document which had relevant bearing in this matter could not be placed by the review petitioner before this Court at the relevant point in time when the writ petition was being heard.

8. Referring to Annexure-H, Page-244 of the paper book, the learned counsel for the review petitioner referred to the communication of Minister of State for Railways dated 09.11.2006 enclosing the Note therewith. The learned counsel for the review petitioner submits that the said communication contains a Note which is relevant for the issue sought to be urged by the review petitioner in the present review application. According to the petitioner, the item No. 1 in the note is relevant, the same is extracted below:

"Item No. 1 Recognition of Purbanchaliya Rail Karmi Parisad

Ministry of Railways have decided to conduct secret ballot to establish exclusive membership of a Rly. employee to a union. Till modalities to conduct secret ballot are finalized and elections are held, Rly. Board can't give recognition to any new union on the Railways. In any case, recognition will be given on the basis of secret ballot as and when elections are held."

9. Referring to the note at Item No. 1 as extracted above, the learned counsel for the review petitioner submits that the Railways had decided to conduct a Secret Ballot to establish exclusive membership of Railways Employees to a Union. Till such modalities to conduct Secret Ballots are finalized and elections are held, Railway Board cannot give recognition to any new Union on the Railways. Recognitions are to be given on the basis of Secret Ballot as and when the elections are held.

10. The learned counsel for the review petitioner submits that in view of the position as reflected from the Ministry of Railways, the decision of the Railway Authorities to arrive at a conclusion that the PRKP Union, namely the review petitioner, is not a recognized Trade Union is contrary to the instruction of the Ministry of Railways. In the absence of this Note being placed before this Court, this Court arrived at a conclusion that PRKP/Union is not a recognized Union of the Railway Board and in that view of the matter, the order dated 05.01.2022 passed by this Court in W.P(C) No. 4841/2021 calls for a review as the said document is required to be considered by this Court to decide on the status on the recognition of the PRKP Trade Union. It is submitted that inspite of due

diligence, the said document could not be procured and placed before this Court prior to delivery of the order dated 05.01.2022. This document came to the possession of the Union only after the passing of the order dated 05.01.2022 and therefore, the present review petition has been filed seeking review of the order dated 05.01.2022. It is submitted by the learned counsel for the review petitioner that on the facts and circumstances as narrated, this is a fit case where the order dated 05.01.2022 passed in W.P(C) No. 4841/2021 be recalled and the matter be posted for re-hearing and appropriate orders thereon be passed.

11. Mr. D.J. Das, learned counsel for the Railway Authorities submits that the order dated 05.01.2022 passed in W.P(C) No. 4841/2021 has been rendered after due appreciation of all relevant facts and materials placed before the Court and the present documents sought to be relied upon by the review petitioner does not change the status of the review petitioner and therefore, only on that ground the order dated 05.01.2022 does not require any review. The review petition should be dismissed.

12. We have heard the learned counsels for the parties and we have perused the order dated 05.01.2022 passed in W.P(C) No. 4841/2021. We have also carefully perused the pleadings connected to the present review proceedings.

13. This Court vide order dated 05.01.2022 had arrived at a conclusion that the present review petitioner/Union is not a recognized Trade Union in view of

the undisputed position that there was a secret ballot conducted. Out of a total of 61,003 votes (valid votes cast 53,994), the review petitioner Union had secured only 577 votes which amounts to about 0.9% of the total votes cast. According to the Railways, the minimum benchmark is to have at least 30% of the total votes cast for getting necessary recognition as a Trade Union in the Railways.

14. This fact is not disputed by the review petitioner. The documents now relied upon by the review petitioner whereto a Note is appended to the communication dated 09.11.2006 issued by the Minister of State of Railways, Government of India, wherein as per Item No. 1 in the Note appended, the recognition required to be granted to the Unions/a new Union by the Railways, has to be on the basis of Secret Ballot and election held. It is submitted by the learned counsel for the review petitioner that the findings of the Railway Authorities that the review petitioner secured 0.9% of the total votes cast is contrary to the Railway Board instructions inasmuch as such election by way of Secret Ballots are only for recognition of "New Union". The learned counsel for the review petitioner submits that the PRKP/Union is an existing Union and therefore, there is no question of granting recognition on the basis of Secret Ballot cast. Such contention of the learned counsel for the review petitioner is not substantiated by any documents to suggest that the PRKP Union i.e. the review petitioner was already an existing Union recognized by the Railways.

15. On the contrary, there is also no denial of the fact the Review Petitioner-PRKP had indeed participated in a Secret Ballot wherein it managed to secure only 0.9% of the total votes cast. There is no explanation furnished by the learned counsel for the review petitioner as to what necessitated participation of the review petitioner in a secret ballot if it was already an existing recognized Trade Union of the Railways. As such on these facts, no review of the order dated 05.01.2022 passed in W.P(C) No. 4841/2022 is called for.

16. The Apex Court in ***Sow Chandra Kante and Another -Vs- Sheikh Habib***, reported in ***(1975) 1 SCC 674***, the Apex Court explained the parameters for exercise of the review jurisdiction under the High Courts. The relevant paragraph is extracted below:

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for Counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but

frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as Counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

17. Similarly in ***S. Nagaraj and Others –Vs- State of Karnataka and Another*** reported in ***1993 Suppl. (4) SCC 595***, the Apex Court in respect of review held as under:

"19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered:

"... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the

Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power was stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has

been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice”

18. In view of the well settled law as extracted above and the discussions made above, a review proceeding cannot be permitted to be treated as a proceeding for rehearing of the appeal again. The grounds on which the present review petition is couched have all been addressed upon by the Appellate Court and therefore on such grounds if the review is permitted it will only amount to rehearing of an appeal which has already been decided.

19. The contention of the learned counsel for the review petitioner is that the communication dated 09.11.2006 along with a Note (Annexure-H, Page 244 in the paper book) is a relevant document which requires a review of the Judgment cannot be accepted as the said documents relied upon by the learned counsel for the petitioner does not in any way improve the case of the review petitioner. It is not in dispute that the Review Petitioner is not a recognized Trade Union of the Railways. As per the Railway Authorities in the Secret Ballot held by the Railways, the review petitioner managed to secure

only 0.9% of the total votes casted. The Secret Ballot was conducted as per the instructions of the Railway Ministry.

20. In that view of the matter, we find no grounds to invoke our review jurisdiction. Accordingly, the review petition being devoid of any merit and the same is hereby dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant