

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No.72 of 2010**

1. Union of India, Through Secretary, Ministry of Railway, New Delhi
2. Divisional Railway Manager, SEC Railway Bilaspur
3. Divisional Personnel Officer, SEC Railway, Bilaspur

---- Petitioners**versus**

1. Satish Kumar Agrawal S/o Shri Mahesh Prasad Agrawal, aged about 43 years, R/o Quarter No. 339-D, Zone II BMY Charoda, Bhilai, District Durg, Chhattisgarh
2. Jayant Maratha S/o Shri T.S.Maratha, Age 37 years, R/o Qr. No. 5/1, Railway Quarters, Bhilai Nagar, Durg, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Abhishek Sinha, Advocate
For Respondents	:	Shri H.B.Agrawal, Senior Advocate with Smt. Preeti Yadav, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice Prashant Kumar Mishra

Order on Board**Per Navin Sinha, Chief Justice****27/11/2015**

1. I.A. No.1 has been filed for condonation of 8 days' delay in filing the review application. Considering the duration, I.A. No.1 is allowed and delay is condoned.
2. I.A. No.6 has been filed for impleadment and amendment. Learned Counsel for the Petitioner is permitted to make corrections in the cause-title by adding the name of Shri Jayant Maratha, Petitioner No.2 in Writ Petition No.4198 of 2005 from which the present review application arises, as a party-Respondent, during the course of the day.
3. This review application arises from order dated 31.3.2010 in Writ

Petition No.4198 of 2005. The Division Bench held that the Respondents were entitled to the benefit of pay protection in accordance with paragraph 604 of the Indian Railway Establishment Manual Volume-I (1989 Edition). The orders of the Central Administrative Tribunal were set aside with a direction to fix the pay of the Respondents in accordance with the same and issue correction slips accordingly.

4. Learned Counsel for the Review Petitioner contended that the Respondents were transferred on their request to lower post before 24.2.1995, the date when the correction slip to paragraph 604 was issued. The correction slip to paragraph 604 was prospective in nature and would not apply to the Respondents. The subsequent circular dated 14.2.2006 clarifies that where transfer to a lower post was made subject to certain specified terms and conditions the pay had to be fixed in accordance with the same, meaning thereby the case of the Respondents would be governed by the status as existing prior to 24.2.1995 and in accordance with the conditions in their transfer order. It was next submitted that the Railway Board's Instruction dated 31.8.2009, relevant to the controversy could not be brought on record for consideration by the Court inadvertently.

5. Learned Senior Counsel for the Respondents has opposed the review application submitting that there is no error apparent on the face of the record.

6. We have considered the submissions.

7. The scope of review jurisdiction being narrow, confined to errors apparent on the face of the record, it would cover only errors which are patent and not latent errors which have to be brought forth by a process of reasoning requiring further and detailed hearing and re-examination of materials including fresh grounds that may be urged. The order of the

Division Bench, review of which has been sought, *inter alia* notices the clarificatory circular dated 14.2.2006 also to arrive at its conclusions. Therefore, we are satisfied that the order, review of which is sought, does not suffer from any patent error inasmuch as any relevant circular was not noticed. If the Review Petitioner is of the opinion that the interpretation was not correct, the remedy is different.

8. It was duty of the Review Petitioner to bring on record the circular dated 31.8.2009 if it sought to rely upon the same. The expression that it was inadvertent is preceded by the words that the Railways failed to place its instructions, which in our opinion signifies negligence on the part of the Review Petitioner. Thus, the failure of the party to bring on record relevant document already in possession without any sufficient justification cannot be a ground for review.

9. We therefore find no merit in the review application. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Prashant Kumar Mishra)
JUDGE