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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1180 OF 2018
IN
WRIT PETITION NO. 6130 OF 2005**

Union of India & anr. ..Applicants

IN THE MATTER BETWEEN

Lalta Prasad ..Petitioner

Vs.

Union of India & ors. ..Respondents

.....

Mr. T.J. Pandian for applicants.

Mr. Rahul Walia I/b. Gurdeep Singh Walia for respondent No.1.

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**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

DATE : 8th JANUARY, 2019

P.C. :

Heard Mr. Pandian in support of this application.

2. The prayer in this application is to recall a detailed judgment and order delivered by this Court in Writ Petition No. 6130 of 2005.

3. Mr. Pandian would submit that this Court has passed an order which, although rejects the prayer of the original petitioner to quash the inquiry as a whole, but still holds that the Disciplinary Authority, Appellate Authority, Revisional Authority and Central Administrative Tribunal have erred in not considering the fact that the Inquiry Officer did not examine the complainant, whose name is to be found in the operative order in paragraph 25 of the Petition. The argument of Mr. Pandian is that remand should not be ordered in such old matters and it is not possible to secure the presence of the witnesses, particularly one of the original complainant, who has since expired.

4. It is in these circumstances that this Court should not have directed passing a fresh order by the Inquiry Officer. That means the inquiry must be held de-novo. The period of six months granted to complete the inquiry and pass a fresh order has since expired, but it is impossible to comply with the directions on account of the absence of the original complainant.

5. It is conceded that though the prayer in the application is couched as recall simplicitor, though not in specific terms, but this is an application seeking a review of the judgment and order passed in the Writ Petition.

6. We do not see how the request for recall can be made when the Union of India—original respondent and the Department of Railways was heard extensively by the Division Bench comprising one of us (M.S. Karnik, J.). Once on merits, the version of the original respondent has not found favour with the Division Bench, it issued the limited order and direction. The order is reasoned and on merits. It can be challenged before the higher Court. The judgment and order cannot be recalled because the parameters of review jurisdiction are well settled. In the garb of entertaining the Review Petition, we cannot go behind the order under review. We will have to look at the same materials and all this is permissible only in exercise of appellate or revisional jurisdiction. A Review is not akin to such jurisdiction. In the circumstances, the application is entirely

misconceived and, therefore, dismissed. There will be no order as to costs.

7. This Court in the judgment has clarified that if the Inquiry Officer is unable to secure the presence of all the witnesses then he can rest his conclusion on the basis of other materials on record. He can as well record reasons for the absence of all the witnesses. The time to conclude the inquiry is extended to 3rd April, 2019. No further extension will be granted.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)