

D/L- 4
19/12/2025
Ct. No.-446
Kaushik/Aritra

CPAN 1126 of 2025

Subodh Kumar

Vs.

**Sri P. Mallikarjuna Prasad,
Chairman, Coal India Limited & Ors.**

In

W.P.A 18053 of 2023

With

RVW 146 of 2025

With

CAN 1 of 2025

Coal India Limited & Ors.

Vs.

Subodh Kumar

Mr. Ayan Podder
Mr. Soham Datta
Ms. Anjali Shaw

....for the review applicant and
for the respondent in CPAN 1126 of 2025

Mr. Swapan Kr. Dutta, Sr. Adv.
Mr. Sambuddha Dutta

... for the respondent in
RVW 146/2025 and
For the petitioner in CPAN 1126 of 2025

In Re:- RVW 146 of 2025

With the consent of both parties, RVW 146 of 2025 is treated as the day's list, and taken up first for hearing.

This memorandum of review has been preferred praying for review of the judgment dated May 2, 2025 passed by this Court in WPA 18053 of 2023. By that judgment, the writ petition was disposed of with the following directions:-

“20. Therefore, based on the foregoing discussion, the only conclusion that can be drawn is that the punishment of ‘Censure’ is unsustainable and cannot be allowed to stand. Accordingly, the portion of the order passed by the Appellate Authority imposing the

punishment of 'Censure' upon the petitioner is hereby set aside. Consequently, the order passed on the revision petition, if any, insofar as it affirms the said punishment, is also liable to be set aside and cannot be sustained.

21. As previously noted, the petitioner seeks a direction restraining the respondents from giving effect to the charge-sheet, the enquiry report, the final order of punishment, and the order of the AA. However, in view of the doctrine of merger, it must be held that the final order of punishment has merged with the order of the AA, and no longer stands independently. Furthermore, the charge-sheet and the enquiry report merely represent preliminary findings or allegations that indicate a prima facie case, the validity of which is contingent upon acceptance by the DA. Therefore, in the present context, passing any order concerning the charge-sheet or the enquiry report would serve no practical purpose and would, therefore, be otiose.

22. With these observations and order, this writ petition is, thus, disposed of. However, there shall be no order as to the costs."

Mr. Podder, learned advocate appearing in support of the petition for review, submits that this memorandum of review has been preferred solely on the ground of "error apparent on the face of the record." He submits that the judgment was passed in the absence of the representative of the respondents. He further submits that, indisputably, sufficient opportunity was given to the respondents to present their case; however, the learned advocate engaged by the respondents was not diligent, and due to his lackadaisical approach, the case of the respondents could not be presented before this Court at the time of final hearing of the writ petition.

He submits that a proceeding was initiated and a charge-sheet containing two articles of charge was served upon the delinquent employee. He submits that, under Article 1 of the charge, it was alleged that the delinquent employee acquired certain property in the name of his wife without giving prior intimation to his employer, whereas under Article 2 it was alleged that the petitioner was involved in certain business activities. He submits that both the disciplinary authority and the appellate authority rightly held that the management could not bring proper materials to substantiate charge no. 2; however, the management succeeded in proving charge no. 1.

Referring to the contents of paragraph 6 of the judgment dated May 2, 2025, he submits that this Court observed that the appellate authority had stated that the management imposed a reverse burden upon the petitioner to disprove the allegation and it is generally challenging to prove a negative fact rather than a positive assertion. He further submits that nowhere did the appellate authority make such an observation.

Referring to paragraph 4 on page 51 of the order of the appellate authority, he submits that the appellate authority itself observed that “the fact remains that he did not send any intimation to the management till the issuance of the memorandum of charge.” He suggests that this observation itself indicates that the appellate authority held that charge No. 1 was proved. He submits that the appellate authority ultimately observed that the delinquent employee should have been more careful, and considering all conduct, the penalty of censure was imposed. He submits that the non-consideration of these

materials constitutes an error apparent on the face of the record, and such non-consideration can be a valid ground for review.

Mr. Podder relies upon the decision reported in (2005) 4 SCC 741, (*Board of Control for Cricket in India vs. Netaji Cricket Club & Ors.*), in support of his contention.

Mr. Datta, learned senior counsel appearing for the respondent, submits that the scope of review is very limited. A person can pray for review only on three grounds, namely: (i) error apparent on the face of the record; (ii) discovery of new and important matter and/or evidence which the petitioner, despite due diligence, could not place before the Court when the original petition was finally heard; and (iii) any other sufficient reason. He submits that a review cannot be an appeal in disguise, and one cannot, by filing a review application, seek the liberty to re-argue the matter.

Mr. Datta relies upon the decisions reported in (2024) 2 SCC 362, *Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr.*, and (2025) SCC Online SC 1927, *Malleeswari vs. K. Suguna & Anr.*, in support of his contentions.

It hardly needs any emphasis that Section 114 and Order 47 Rule 1 deal with the right of any person to seek review and the procedure to be followed in dealing with an application for review, respectively. Though, by virtue of the explanation to Section 141 of the Code of Civil Procedure, neither Section 114 nor Order 47 Rule 1 directly applies to the present proceedings, the underlying principles are nonetheless applicable. Furthermore, a writ Court has the inherent power to review its own order.

It is a well-settled principle of law that once a judgment or order is delivered, it cannot be altered thereafter. However, a Court can be invited to review its own order only on three grounds: (1) the discovery of new and important matter or evidence which, despite exercising due diligence, was not within the applicant's knowledge or could not have been produced at the time the judgment or order was passed; (2) an error apparent on the face of the record; or (3) any other sufficient reason.

It is a settled proposition of law that contentions raised and decided in the main proceedings cannot be reopened or re-agitated under the guise of a review petition. The power of review should not be confused with the appellate power, which allows an appellate court to correct all errors made by a subordinate court.

Admittedly, there is a distinction between a mere erroneous decision and an error apparent on the face of the record. An error can be considered apparent on the face of the record only when it is patent, easily identifiable without the need for elaborate argument, and leaves no room for controversy. Such an error, which is immediately obvious as if it stares upon a simple glance, can be stated to be an error apparent on the face of the record. An error that requires elaborate argument to pinpoint cannot be stated as, nor constitute, an 'error apparent on the face of the record.'

In the decision of *Lily Thomas Etc. Etc. vs. Union of India & Ors.*, reported in (2000) 6 SCC 224, it was observed that, according to the dictionary, the meaning of 'review' is the 'act of re-looking' or offering something again with a view to correction or improvement.

In the present case, it was alleged by the review applicant that the observation made in paragraph 16 of the judgment dated May 2, 2025, to the effect that the appellate authority itself observed that the management imposed a reverse burden upon the petitioner to disprove the allegation, was not made by the appellate authority. However, a bare perusal of the order of the appellate authority, particularly paragraphs 3 and 4 of page 50 of the application for stay of operation of the judgment dated May 2, 2025, filed in connection with the memorandum of review by the review applicant, shows that the appellate authority observed that the delinquent employee contended that the disciplinary authority (DA) had shifted this burden upon him to prove a negative, which is impermissible. In the first line of paragraph 4, the appellate authority observed that ‘contention of Sri Subodh Kumar, the delinquent employee, had some merit because the charges should be proved through conclusive evidence.’

Therefore, without entering into the question of whether an erroneous observation made by a Court can be considered an error apparent on the face of the record, it can be stated that the assertion made by the review applicant is not proper. The main contention of the review applicant is that since the respondents remained unrepresented, the case of the respondents could not be properly presented. As per clause 19.2 of the applicable rule, the delinquent employee was obligated to give prior intimation of acquisition of any property to his employer, and since that was not done, the appellate authority found that charge No. 1 was proved.

Although a review application cannot be used to invite a Court to justify its own order or the observations made therein, it can be observed that the appellate authority itself considered that the disciplinary authority had not taken into account the guidelines to be followed in handling intimation of acquisition as contained in the Government of India CBC, G.O. No. 99/BGA/69 dated February 26, 2001. This observation of the appellate authority is reflected in paragraph 1 on page 51 of the application, and ultimately, the appellate authority found merit in the contention of the delinquent employee.

Therefore, whether the order of the appellate authority or the order of the disciplinary authority has been misconstrued and/or misinterpreted in the judgment cannot be the subject matter of a review on the ground of error apparent on the face of the record. If any observation made appears erroneous to the review applicant, the only remedy available to him is to prefer an appeal. Since this Court cannot revisit a decision merely because it appears erroneous to the review applicant, it is unable to entertain this petition.

Accordingly, for the reasons and discussions stated in the preceding paragraphs, the review application RVW 146 of 2025 is dismissed, and its connected application is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

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The affidavit of service filed by the petitioner in Court today is taken on record.

Mr. Podder submits that he has been instructed to represent the alleged contemnors and prays for an adjournment of two weeks to obtain the necessary instructions.

In view thereof, list this matter 2 weeks after the ensuing Christmas vacation.

(Partha Sarathi Chatterjee, J.)