**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1**
**ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.**

**Present : Justice Vikas Kunvar Srivastava (Retd.)**
**(Presiding officer)**
**CGIT, Delhi-1**

**Misc. Application No.05 (In ID. No.55/2015 Decided)**

Sh. Mani Lal Shah S/o Lt. Sh. Kishan Lal Shah,
As represented by CPWD Mazdoor Union,
C/o Room No. 95, Barrack No.1/10, Jam Nagar House,
New Delhi-110011

Claimant (Applicant) ……

Versus

The Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-110001

Management (Opposite party) …

Shri B.K. Prasad, A/R for the claimant (Applicant).
Shri Atul Bhardwaj, A/R for the management (Opposite party).

## ORDER

**1.** The present application is moved by Sh. Anand Kumar Gautam and Sh. Mani Lal Shah workmen in whose favour the reference made by the appropriate government (Ministry of Labour Government of India, New Delhi) was decided in ID NO. 55/2015 by means of an award dated 11.04.2019. The director general (CPWD Nirman Bhawan, New Delhi) was the management opposite party in the aforesaid Industrial Dispute No. ID 55/2015. The present application is moved Under Rule 28 of

Industrial Disputes (Central Rules 1957) purporting correction of alleged error in the said award dated 11.04.2019.

The applicants allege in Para-3 of the application reproduced here in below:-

*"That the Para 17 of the Award dated 11.04.2019 it is wrongly mentioned being a typographical error that the workmen have neither pleaded nor adduced any evidence to show that they were not gainfully employed anywhere, since the date of their termination. The said Para 17 of the Award us reproduced as under:*

***17.** It will not be out of place to mention here that the claimants/workmen have neither pleaded nor adduced any evidence to show that they were/are not gainfully employed anywhere, since the date of their termination. Having regard to the legal position as discussed above and the facts of this case, this Tribunal is of the firm view that the claimants/workmen herein are entitled for reinstatement into service on the same post with continuity of service. Award is passed accordingly.*

*Let copy of this Award be sent for publication as required Under Section 17 of the Act.*

*Dated : 11.04.2019* ***Sd/-***

***(Avtar Chand Dagar)***

***Presiding Officer***

***CGIT-cum-Labour Court-1***

*This fact has a typographical error in Para 17, so Sh. Anand Kumar Gautam S/o Lt. Ram Kishan and Sh. Mani Lal Shah S/o Lt.*

*Kishan Lal Singh, workmen are entitled full backwages w.e.f. their date of termination as the law mentioned in Para 16 of the award. Copy of the said Award dated 11.04.2019 is annexed here with this application as* ***Annexure-A."***

**2.** The application for correction/rectification of the Award is resisted by the opposite party management CPWD by filing a reply saying the said Para 3 of the application absolutely wrong. It is further stated that there is no typographical error in recording it's observation by the tribunal that, the workmen have neither pleaded nor adduced any evidence to show that they were not gainfully employed anywhere as alleged. The management firmly states that award is passed on merit and that can be challenged in Hon'ble High Court only. Entertaining the present application will amount to review by the Tribunal of it's own order without any statutory power.

**3.** In support of the application for correction of the award it is argued by the learned AR for the workmen that serious mistake is committed by the tribunal in not following the judicial verdict given by the Hon'ble Apex Court in case of ***Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324*** and ***Hindustan Tin Work Pvt Ltd V. Its Employees*** 1978 II LLJ 474.The Vehemence of argument is on the non observance by the tribunal of the law laid down with regard to the restatement with full backwages when the termination is held illegal and set aside. It is prayed by the Claimants/Applicants from the tribunal that applying the mind on the law laid down by the Apex Court in aforesaid judgment the tribunal to treat the lack of order as to the grant of backwages a typographical error the same be rectified by adding appropriately in the operatly portion operatly Para 17 of the

award. For the purpose of easy reference the law laid down and summarized by the Apex Court in the case of Deepali Gundu(Supra) is reproduced here under:-

> ***33. The propositions which can be culled out from the aforementioned judgments are:***
>
> ***i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> ***ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.***
>
> ***iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not***

***employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.***

***iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.***

***v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to***

***give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.***

***vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).***

***vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the***

***judgment is also against the very concept of reinstatement of an employee/workman.***

**4.** Learned AR for the management CPWD did not appear when the case was repeatedly called for argument, However in the reply to the application objection as to the competence of the tribunal to entertain such application is raised on the ground that, the Rule 28 of the Industrial Disputes (Central) Rules 1957 is meant to correct the arithmetical or clerical error which crept in the award by reason of any accidental slip. The tribunal can not reopen the award which is passed on merit for reappreciation of evidence or evaluation of facts in pleadings.

**5.** After hearing the learned AR for the claimants workmen the tribunal perused the award dated 11.04.2019, is perused, it is found that after a detailed discussion of the evidence in the case the tribunal passed the award. The judgment of Hon'ble Apex Court in case ***Deepali Gundu Surwase V. Kranti Junior (Supra)*** has also been taken into consideration by the Presiding Officer the extract of the judgment as referred by the Learned AR for the applicants in his argument and the application itself had found place in the award and thereafter conclusion is drawn on the basis of evidence available on record of the case in its Paras 16&17 the said Paras are reproduced hereunder to easy reference.

***16.*** *"The propositions which can be culled out from the aforementioned judgments are:*

*(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*

*(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required*

*to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."*

***17.*** *It will not be out of place to mention here that the claimant/workmen have neither pleaded nor adduced any evidence to show that they were/are not gainfully employed anywhere, since the date of their termination. Having regard to the legal position as discussed above and the facts of this case. This termination is of the firm view that the claimants/workmen herein are entitled for reinstatement into service on the same post with continuity of service. Award is passed accordingly.*

*Let copy of this Award be sent for publication as required Under Section 17 of the Act.*

**6.** The relief prayed in the claim statement or plaint if not granted, whether or not denying the same in expressed words, amounts refusal from granting the same in the discretion of the court. Since such relief is not granted on merit while deciding and answering the reference hence it may not be said that there occurred any typographical, clerical or arithmetical mistake committed by the tribunal by reason of any accidental slip in the award.

**7.** To see the scope of Rule 28 of the Industrial Tribunal (Central) Rules 1957 it is reproduced here under:-

> ***Correction of errors.-****The Labour Court, Tribunal, National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.*

**8.** In view of the facts stated here in above the question for consideration before the tribunal is that whether tribunal has inherent power to exercise for correction of the award in terms of evidence if any available on record of the case like review which is a power conferred to the court/tribunals by the legislation. Power of review of its own order by the tribunal is not conferred in the Industrial Dispute Act and Rules of 1957. So far as the correction of the error as referred in the Rule 28 is concerned its scope is very limited to the clerical, arithmetical errors only. The tribunal is constituted Under Section 7A of the Industrial Dispute Act 1947 for adjudicating claims in accordance with the rules of procedure specially framed under the Industrial Dispute Act of 1947 Industrial Tribunal gets jurisdiction to render an award based on reference made to it under Section 10 of the Industrial Disputes Act. It

can only answer the question referred to it and it cannot travel outside the question. Once it has answered that reference it loses its jurisdiction over the subject matter of that reference except to correct clerical or arithmetical errors or to rectify some accidental omission that has occurred in the award already rendered. The award has been passed on 11.04.2019 by the then Presiding Officer of the CGIT Delhi-1.

**9.** Rule 28 does not purport to reopen the award. The tribunal is not sitting over the judgment of its Predecessor Presiding Officer, so as to undertake a fresh enquiry and render an award in a sense contradicting itself as such power is not conferred on the tribunal.

**10.** Rule 28 of Rules (Supra) is *pari materia* with section 152 of Civil Procedure Code 1908. In the present case the Authorized Representative for the claimants applicants contends that by the award dated 11.04.2019. The tribunal though held that the termination of the claimants workman was illegal, however specifically on the issue of restatement with backwages dispite the law propounded by Apex Court in the case of **Deepali Gundu** (Supra) and **Hindustan Tin Works Ltd V. Its Employees** (Supra) were placed before the tribunal, the tribunal did not award the back wages. In somehow similar circumstances, where a tribunal had entertained an application to this effect the Apex Court setting aside the order of the tribunal held that such exercise of power by the tribunal virtually amounted to review of its own order and therefore beyond the jurisdiction of the tribunal. In **Kapra Mazdoor Ekta Union V. Birla Cotton Spinning and Weaving Mills Ltd and others** it is further held also, the tribunal that recall of the earlier order, passed in terms of the settlement, proceeded on a factually incorrect assumption that the earlier Tribunal did not consider the question whether the

settlement was just and fair and protected the interest of the workmen. The High Court has found that the earlier Tribunal while making the award in terms of the settlement had in clear terms recorded its satisfaction in Para 25 of its order [set out in paras 9 and 10 herein] that the settlement was fair and just. No fault can be found with this conclusion of the High Court. Lastly, the submission that the settlement did not resolve the disputes which were subject- matter of reference made to the Tribunal proceeds on a misreading of the settlement and has no force. It is held that 'where a court or quasijudicial authority having to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasijudicial authority is vested with power of review by express provision or by necessary implication.

**11.** In Uttar Pradesh State Road Transport Corporation V. Imtiaz Hussain 8 SC 308 Para 6 & 7 are quoted here under to see the nature in scope of the power Under Rule 28 of the Central Rules (Supra) which is as below:-

> ***6.*** *It is to be noted that there is no similar provision in the Industrial Disputes Act, 1947 (in short "the Act"). The provision is similar to Section 152 of the Code of Civil Procedure, 1908(in short "CPC").*
>
> ***7.*** *Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing*

*effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot (sic), on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, (sic modify it) in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental*

*(a) omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum,*

*(b) subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151and 152 of the Code even after passing of effective orders in the lis pending*

*before them. No court can, under the cover of the aforesaid sections, modify,*

*(c) alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in* ***Dwaraka Das V. State of M.P. and Jayalakshmi Coelho V. Oswald Joseph Coelho.***

**12.** In state of **West Bengal V. Kamal Sen Gupta (2008) SCC 612** it is held that, mistake or error apparent on the face of the record means mistake or error which is prima facie visible and does not require any detailed examination. In the present case the allegation is factually to the effect of erroneous view of law as against the law propounded by the Apex Court is **Deepali Gundu** (Supra). The application does not have force of law and is baseless for rectification of award in respect of the alleged typographical error invoking it's power under Rule 28 of the Industrial Disputes (Central) Rules 1957.

## ORDER

The rise application No dated Under Rule 28 of the Industrial Disputes (Central Rules) 1957 is rejected.

Justice Vikas Kunvar Srivastava (retd.)
Presiding Officer
January 09, 2023

Vanshika Saini