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

Misc. Application No.05/2019 (In ID. No.127/2017 Decided)

Sh. K.L. Chhabra,
WZ 20-A, Om Vihar Phase – 1,
Uttam Nagar, New Delhi – 110059

Claimant (Applicant) ……

Versus

The Asstt. General Manager,
Punjab National Bank, Zonal Office,
DAC Cell, 4th Floor, Rajendra Bhawan,
Rajendra Place, New Delhi – 110008

Management (Opposite party) …

Shri K. L. Chhabra, claimant in person (Applicant).
Shri Rajat Arora, A/R for the management (Opposite party).

ORDER

1. The present application is moved by the claimant Shri K.L.Chabbra workman in whose favour the reference made by the appropriate Government (Ministry of Labour Government of India, New Delhi) was decided in ID No.127/2017 by means of an award dated 25.06.2018. The Asstt. General Manager, Punjab National Bank, New Delhi, was the management opposite party in the aforesaid Industrial Dispute No.127/2017. The present application is moved under Rule 28 of Industrial Disputes (Central Rules 1957) purporting correction of alleged error in the said award dated 25.06.2018.

The applicant allege in the prayer of the application reproduced here in below:-

"18. I am entitled to the relief of amounts and benefits as mentioned vide pare nos. 76 to 103 in prayer column of my claim statement followed by contents of my affidavit dated 4.5.10, vide para nos. 4 to 18, 20 to 22, contents of affidavit dated 28.08.017 contents of para nos. 19 to 42 specially of my written arguments dated 6.7.10 and additional written arguments dated 13.12.017.In case amounts mentioned and calculated vide para no. 80 of my claim statement and vide page

no. 55 of my schedule dated 10.01.08 are acceptable to management, then o.k. otherwise management be directed to prepare entire arrears as mentioned vide para nos. 76 to 103 of my claim statement from their side alongwith interest on the amounts found due to me on every illegally withheld amount/benefit wef respective due date (s) till date of actual payment. In this regard contents of para nos. 4 to 5 of my supplementary clarification dated 11.04.08 are reiterated. From that amount, an amount of Rs. 65709/- is to be deducted as mentioned vide para no. 17 of my affidavit dated 04.05.010 (kept on page no. 169) in court file.

19. An amount of Rs.2768/- alongwith interest wef 1.8.85, till date of actual payment is also includable in your order vide para 78 of my claim claim statement, followed by itemwise claims of workman according to affidavit, vide para 19 of my written arguments dated 6.7.10.

20. While filing a writ petition no. 13506/09 against the recovery certificate date 22.09.09 issued by the then RLC. 3d excuse was mentioned in abovesaid writ petition that calculated amount in abovesaid certificate for Rs. 2,37,585/- was not correct. So, in this case also, in case amount mentioned vide para 80 of my claim statement for Rs. 393719-65709 is equal to Rs. 327010/- will be ordered alongwith arrear of computer increment as mentioned vide para 82 of my claim statement vide page no. 459 in court file along with interest then again management will file a writ petition in High court on excuse that calculated amount of Rs. 393719 is not correct. In this manner, High court will again remand back this case in this court again and thus, no relief may be given to me. So it is better to direct management to prepare entire wages/arrears from their side, alongwith interest as explained vide para 4 to 5 of my supplementary clarification dated 11.04.08.

21. For the period of preparation of arrears from their side for the period w.e.f. 16.08.89 to 20.03.91 and w.e.f. 25.09.93 to 3.11.94 document no. 27 (. listed at sl. No. 89, vide page no. 555 (in court file) in list of documents followed by contentions vide para nos. 29 and 34 of my claim statement, and vide paragraph nos. 34 and 35 on page number 20 of my previous written arguments dated 06.07.010 being the remaining balance amounts payable after deducting the less subsistence allowance paid by management for suspension periods of Paharganj and Dev Nagar branches are applicable.

22. A fresh award in this case be given by giving topmost priority in any case upto 30.12.019, because this case has already been delayed very very very very very very much due to misguiding statements of various officials of management and their advocate on panel in high court and in this court.

23. I again make it clear that my claim is w.e.f. 15.01.85 to 24.5.95 while authorized officer of management Shri Vinay Tewari has again filed a wrong affidavit in September 2017 upon the advice of his advocate on panel Shri Rajat Arora for the period w.e.f. 28.10.85 to 16.08.89. According to this wrong

affidavit, an amount of Rs. 65709/- only has been paid to me. Para 82 of my claim statement vide page no. 459 in court file along with interest then again management will file a writ petition in High court on excuse that calculated amount of Rs. 393719 is not correct. In this manner, High court will again remand back this case in this court again and thus, no relief may be given to me. So it is better to direct management to prepare entire wages/arrears from their side, alongwith interest as explained vide para 4 to 5 of my supplementary clarification dated 11.04.08.

19. Please send a copy of fresh award in this case immediately at my residential address by mentioning my cell phone number on the envelope bearing it as and when award is made. Prayed accordingly.

Dated: 25-11-19"

2. The application for correction/rectification of the Award is resisted by the opposite party management P.N.B. 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. 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. Learned AR for the management P.N.B. 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 cannot reopen the award which is passed on merit for re-appreciation of evidence or evaluation of facts in pleadings.

4. After hearing the claimant the tribunal perused the award dated 25.06.2018, 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 (2013) 10 SCC 324)*** has also been taken into consideration by the Presiding Officer the extract of the judgment as referred by the Learned AR for the applicant 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 19 & 20 the said Paras are reproduced hereunder to easy reference.

"19- As regards workman's claims (h) to (j) viz to and fro conveyance expenses, costs of this litigation and award of interest are concerned the workman/claimant in para 89 of his claim petition dated 15/7/2009 (file of ID No.27/09) has stated that he be paid to and fro conveyance expenses of auto fare on various dates which will be fixed in this case in future It is worthwhile to mention here that in his affidavit Ex WWW1/A (dated 4/5/2010) as well as affidavit Ex. WW1/B (dated 28/8/2017) filed before this Court, the claimant/workman has neither uttered any word to press this part of his claim, nor he filed any documents regarding the expenses incurred by him. However, in his written arguments, it has been stated that he wasted his time, money and energy in attending more than 30 dates and incurred 13 expenses amounting to Rs.8000/-. It is a matter of record that the workman/claimant was suspended four times during his service with the Management Bank and ultimately he was dismissed from service vide order dated 16/8/2007 on the basis of inquiry report with respect to his grave misconduct viz. embezzlement of amount of Rs 3000/-on 16-1-2006 while he was posted at Narina Vihar Branch of the Bank. An industrial dispute bearing ID No.26/2009 was raised by the workman and after appreciation of material available on record, my learned Predecessor passed an order dated 14/6/2010 on the preliminary issue regarding the legality and validity of domestic enquiry held by the Management against the workman/claimant and finally decided the reference vide Award dated 27/8/2010, thereby removal of claimant/workman was substituted into removal from service with superannuation benefit and without disqualification from future employment. The workman/claimant had preferred Writ Petition (C) No.8159/2011, which was dismissed vide order dated 13/5/2013 (a copy of same is Ex.MW1/1) holding that there was no infirmity in the impugned order dated 14/6/2010 as well as impugned award dated 27/8/2010 passed by the Industrial Tribunal and four weeks time was given to the Management Bank to comply with the award regarding payment of superannuation benefits. All these would show that the claimant/workman was not satisfied with the benefits paid to him by the Management Bank, he used all sorts of litigation either by way of industrial dispute or moving application/s under Section 33-C before the Tribunal time and again and approaching the Hon'ble High Court so as to satisfy his whims and fancies and in utter disregard to the rules and regulations to which he was governed, he made frivolous and flimsy claims time and again. There is nothing on record to suggest that the workman/claimant has been made to contest a lengthy litigation on account of violation of rules by the Management On the contrary, it is the workman/claimant who himself is trying to re-agitate the issues which are already settled and is trying to take advantage of his own wrongs which can not be allowed under law Accordingly this Tribunal is of the considered opinion that the workman/claimant is also not entitled to any amount under claims (h) and (i) being devoid of any merits

20- Having regard to the peculiar facts and circumstances of the case, this Tribunal is of the firm view that the claimant/workman herein is not entitled

to any relief whatsoever The reference petition is decided accordingly and parties are directed to bear their own costs.

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

5. 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.

6. 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._

7. 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 25.06.2018 by the then Presiding Officer of the CGIT Delhi-1.

8. 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.

9. Rule 28 of Rules (Supra) is *pari materia* with section 152 of Civil Procedure Code 1908. In the present case the claimant applicant contends that by the award dated 25.06.2018. The tribunal though held that the termination of the claimant workman was illegal, however specifically on the issue of restatement with backwages despite the law propounded by Apex Court in the case of **Deepali Gundu Surwase V. Kranti Junior** (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.

10. 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").*
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> ***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*
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> *(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,*
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> *(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".***

11. 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 Surwase V. Kranti Junior** (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 arise application No.5 dated 25.11.2019 Under Rule 28 of the Industrial Disputes (Central Rules) 1957, is rejected.

Justice Vikas Kunvar Srivastava (Retd.)
Presiding Officer

Sudha Jain 08/07/2024