



रेल दावा अधिकरण
गुवाहाटी न्यायपीठ

RAILWAY CLAIMS TRIBUNAL

GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Coram: Leena Sarma, Member (Technical)
Mahtab Ahmad, Member (Judicial)

Date of final hearing: 29.09.2023

Date of decision: 20.10.2023

SN	Review Petition No.	Review Petitioner/Applicant in OA	Opposite Party/Respondent in OA
1	REV/GHY/0009/2021 [OAI-64/2013]	M/s. Meghalaya Cements Ltd.	GM, N. F. Railway & GM, S.E.Railway
2	REV/GHY/0010/2021 [OAI-66/2013]	M/s. Meghalaya Cements Ltd.	GM, N. F. Railway & GM, S.E.Railway
3	REV/GHY/0011/2021 [OAI-72/2013]	M/s. Meghalaya Cements Ltd.	GM, N. F. Railway & GM, E. Railway
4	REV/GHY/0012/2021 [OAI-90/2015]	M/s. Megha Technical & Engineers Pvt. Ltd.	GM, N. F. Railway & GM, S.E.Railway
5	REV/GHY/0014/2021 [OAI-128/2013]	M/s. Megha Technical & Engineers Pvt. Ltd.	GM, N. F. Railway & GM, E. Railway
6	REV/GHY/0015/2021 [OAI-84/2015]	M/s. Megha Technical & Engineers Pvt. Ltd.	GM, N. F. Railway & GM, E. Railway
7	REV/GHY/0016/2021 [OAI-92/2013]	M/s. Star Cements Ltd. (formerly: M/s. Cement Manufacturing Company Ltd.)	GM, N. F. Railway & GM, E. Railway
8	REV/GHY/0017/2021 [OAI-136/2014]	M/s. North East Coal House	GM, N. F. Railway
9	REV/GHY/0021/2021 [OAI-92/2015]	M/s. Megha Technical & Engineers Pvt. Ltd.	GM, N. F. Railway & GM, E. Railway
10	REV/GHY/0026/2021 [OAI-56/2013]	M/s. Meghalaya Cements Ltd.	GM, N. F. Railway & GM, E. Railway
11	REV/GHY/0028/2021 [OAI-26/2011]	M/s. Meghalaya Cements Ltd.	GM, N. F. Railway & GM, E. Railway
12	REV/GHY/0031/2021 [OAI-54/2015]	M/s. Star Cements Ltd. (formerly: M/s. Cement Manufacturing Company Ltd.)	GM, N. F. Railway & GM, E. Railway

Present:

Shri K. P. Maheshwari, Learned counsel for the Review Petitioners

Shri A. K. Sarma, Learned counsel for the Opposite Party (in Sl. No.1, 2, 4, 6 to 12)

Shri R. B. Prasad, CLA for the Opposite Party (in Sl. Nos.3 & 4)

Miss N. N. Sarma, proxy counsel for Shri K. Gogoi, Learned counsel for the Opposite Party (in Sl. No.2)

By Mahtab Ahmad, Member (Judicial)

The above 12 review petitions have arisen out of common judgement and order dated 28.04.2021 passed by Single Member Bench of this Tribunal (Hon'ble Member Technical, Smt. Leena Sarma). In the above referred original claim applications, this Tribunal was pleased to dismiss the applicants' claim for refund of (i) overcharge due to calculation mistake of rebate admissible to the applicants on freight rate; and (ii) punitive charge for overloading. Since all the above review petitions have arisen out of common judgement, in which denial for the above claim overcharges have been made on common ground and the applicants are also seeking review of the said judgement on a common ground, therefore the above review petitions have been clubbed together for hearing and reserved for orders by order dated 29.09.2023.

2. We heard Shri K. P. Maheshwari, learned counsel for the review petitioners/ applicants in OA and Shri A. K. Sarma, Advocate Shri R. B. Prasad, CLA and Miss N. N. Sarma, proxy counsel for Shri K. Gogoi, Advocate for the opposite parties/respondents in OA and perused the record.

3. Regarding refund of overcharges on calculation mistake, the review of the original judgement is sought for on the ground that the calculation rebate should be on total freight rate as mentioned in Box no.39 of the Railway Receipt, as held in MFA no.67/2014, MFA no.68/2014 and MFA no.72/2014. In this regard, para 16, Para 29 and Para 38(c) of the common judgement in the above Miscellaneous First Appeal have been referred in the review petitions. While in the impugned judgement, the admissible concession/rebate to the applicants has been calculated on NTR, which includes basic freight + busy season charge, etc.

4. Regarding refund of punitive charge, review has been sought for on the ground that in view of the law laid down in the case law referred in review petitions, especially in *WA 333/2010 Megha Technical & Engineers (Pvt) Ltd. vs. Union of India decided on 10.08.2017*, the applicant is entitled for refund of punitive charge as no show-cause notice has been served and opportunity of

hearing have been given to the applicants while levying and collection of the impugned punitive charge. In the same way, it is also raised that the respondent railways have failed to prove the fitness of the subject weighbridges by producing certificate of Inspector of Mechanical Department as per Rule 1431 of the IRCM Vol-II of 1991 and weighbridge register and tally book maintained by the station master concerned on a daily basis as per Rule 1435 of the said IRCM, therefore, an adverse inference is required to be drawn against the respondent railways about the fitness of the subject weighbridges and the weighment taken therein. Accordingly, imposition of punitive charge for alleged overloading is unfair and not justified.

5. The review petitioners have also stated that on the above points the original judgement is erroneous and presumptuous in nature and also in violation of the case law referred in the review petitions. Accordingly, it has been prayed that the original judgement and order be reviewed and modified and the intended refund of overcharges be allowed.

6. The respondent railways have opposed the review petitions stating that there is no mistake or error apparent on the face of record in the judgement under review. Further, all the points have been elaborately discussed and examined in the judgement, distinguishing the case law referred by the applicants. As such, the review of the subject judgement will amount to re-assess the cases on fact and law, which is not permissible under the power of review. Finally, the review petitions are not filed by the review petitioners/applicants in OA, rather they are filed by the learned counsel Shri K. P. Maheshwari, without furnishing any authority for the same from the applicants. Therefore the review petitions are not maintainable.

7. In all the review petitions, files of all the connected original cases have been requisitioned and are available on record.

8. The learned counsel for the applicants in oral submission has asserted their contentions, as mentioned herein above in the review petitions and prayed for modification of original judgement and order by reviewing the same and allowing the intended refund of overcharges. On the other hand, the learned counsel as well as learned CLA for the opposite party/respondents in OAs have vehemently thrust

that the instant review petitions do not fall within the power of review of this Tribunal, which is very limited in view of the provision of Section 18(3)(f) of the Railway Claims Tribunal Act, 1987 read with Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989, which empowers the Tribunal to review its final decision only on two grounds: firstly, if there is any error or mistake in the judgement apparent on the face of the record; and secondly, on any other sufficient ground. Since the learned Single Member Technical had elaborately discussed every aspects of the matter on both the alleged overcharges, therefore it is beyond the purview of review. The judgement may be right or wrong, but the same is final; of course, subject to an appeal under relevant provision, if any is been preferred. Moreover, the review petitions show that the grounds of challenge in the review petitions were also raised before the Hon'ble Gauhati High Court in certain cases of this common judgement by preferring Miscellaneous First Appeal under Section 23 of the RCT Act. Therefore the said judgement cannot be reviewed under the power of review in the instant review petitions, as appeal has been preferred against the judgement. Authority of Shri K. P. Maheshwari for filing the review petitions of his own is also raised vehemently and rejection of all the review petitions have been sought for.

9. In view of the above arguments, we have to consider the maintainability of the review petitions in view of the legal provision and laws regarding power of review as well as the grounds raised by the applicants in review petitions. No doubt Section 18(3)(f) of the Railway Claims Tribunal Act, 1987 read with Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989 give the Tribunal to review its final decision, if the judgement is erroneous due to some mistake or error apparent on the face of record, or any other sufficient reason, as defined and explained in the Act and Rules in respect of RCT working; but in the CPC under Section 115 and Order LVIII, law relating to review and its ambit has been elaborately given. Although CPC is not strictly applicable to the proceeding before this Tribunal and the Tribunal is required to abide by the principles of natural justice and fairness, but the above provisions of CPC give us a true understanding of the power of review of a judicial forum. As per above provision, it is also a ground to review a judgement

or order, if the aggrieved party could not know or produce any material or evidence after due diligence before the decision of the case and the same has substantial bearing on the findings arrived at in the subject decision.

10. In *S. Bagirathi Ammal vs. Palani Roman Catholic Mission*, reported in 2009 (10) SCC 464, referring to provisions under Order XLVII Rule 1 of C.P.C., the Hon'ble Supreme Court has held as under:

"A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgement or order of the Court which passed the decree or order. The provision also makes it clear that an application for Review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An error contemplated under the Rule must be such which is apparent on the face of the record and not on error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order".

11. In *Inderchand Jain (D) Th.Lrs. vs Motilal (D) Th.Lrs* [(2009)14 SCC 663], the Hon'ble Supreme Court has discussed the jurisdiction of a Court to review its own decision. The Hon'ble Supreme Court reiterated the principles of review in this way –

"(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of C.P.C.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may be conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even n Advocate.

(v) An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'".

12. Thus, it is evident that error contemplated under the power of review must be such which is apparent on the face of record and not an error which has to be fished out and searched. It must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. It should be so apparent that without further investigation or enquiry,

only one conclusion can be drawn in favour of the appellant. Under the guise of review, the parties are not entitled to re-hearing of the same issue, but the issue can be decided just by a perusal of the records and if it is manifest, can be set at right by reviewing the order. It must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may conceivably be two opinions.

13. Coming on the instant cases, we found that in the subject decision, the Single Member Bench of the Tribunal had dealt with the issue of calculation of rebate admissible on transportation to the North East States and graded concession at Page 26 (II) to Page 30, referring relevant circulars on the subject and concluded that such concession is computable on NTR and not on freight tariff, which is opined in MFA no.72 of 2014 and connected cases regarding computation of rebate under incentive scheme according to Column no.39 of the Railway Receipt. In this process, the Hon'ble Single Bench had referred the extract of relevant circulars, which provides calculation of impugned concession on NTR and not on freight rate under Column no.39 of the Railway Receipt. Thus, the Hon'ble Single Member Bench had dealt the matter extensively, taking into consideration all the relevant aspects of the claim.

14. Regarding punitive undercharge (PUC), the judgement dealt the issue at Page 31 to Page 56, referring all the relevant case laws on the subject, including ***WA 333/2010 Megha Technical & Engineers (Pvt) Ltd. vs. Union of India decided on 10.08.2017***, and distinguishing the same on fact with the instant cases and with the reference of observation of Hon'ble Supreme Court regarding punitive undercharge under Section 73 of the Railways Act, 1989 for overloading of consignment in ***Jagjit Cotton Textile Mills versus Chief Commercial Superintendent and Others decided on 21.04.1998***. Moreover, in all the cases, fitness certificates issued by the Metrology Department of the concerned States regarding the subject weighbridges were also taken into consideration, which were/are on the original records. Of course, the records kept and maintained under Rule 1431 and 1435 of IRCM Vol-II of 1991 are also relevant to fitness of the weighbridge, but these rules are directions to the Railway personnel to ensure the

all-time functioning of the Railway weighbridges and if there is any defect, removal of the same instantly and non-production of the same may give presumption against the Railway about the fitness of the weighbridge. But against this, the certificates of the Metrology Department of the concerned States under the State law, which is imperative before the use of weighbridge or weighing machine, is available on record and the same was taken into consideration by the Single Member Bench while drawing conclusion affirmatively in favour of fitness of the subject weighbridges. Thus, it is clear that full and extensive deliberation on every relevant points in question were made considering the relevant material and conclusion arrived at.

15. In view of the above, if we take into consideration to the above principle governing the power of review of a judicial forum, there is no doubt that these are not a case of mistake or error apparent on the face of record, but it requires a fresh assessment and determination of the material on record. The error pointed out by the applicants in the instant review petitions requires a long drawn process of reasoning on the point with further inspection and enquiry, which is not permissible under the power of review in view of the above observations of the Hon'ble Apex Court.

16. A judgement may be wrong or right, of course subject to appeal, if any is preferred. The appellate authority has power to re-assess the cases of the parties in view of the material available on record and draw its own conclusion on both fact and law and independent to the trial forum, but reviewing court has no such authority and its authority is only limited to the extant as permissible under the law i.e., error or mistake apparent on the face of record or any sufficient reason. When a case has been decided taking into consideration all the aspects of the controversy and the material available on record with detailed discussion of the case law available on the subject, the same cannot be subject of review power in the garb of ground of sufficient reason.

17. No doubt, the review petitions have been filed by Shri K. P. Maheshwari, Advocate, by his own signature in the name of the applicants, but in all the cases,

there is Vakalatnama executed by the applicants in favour of Shri K. P. Maheshwari, even for filing the review petitions. Therefore, we do not find any negativity in filing the review petitions by Shri K. P. Maheshwari, Advocate under his own signature for the applicants. But on merit, on the basis of above discussion and reason mentioned herein above, these review petitions do not satisfy the requirement of review of the subject judgement and the grounds on which the review is sought for, are beyond the ambit of the review power as prescribed in Section 18(3)(f) of the Railway Claims Tribunal Act, 1987 read with Section 32 of the Railway Claims Tribunal (Procedure) Rules, 1989 read with Section 114 and Order LVII of the CPC. Therefore, all the instant review petitions are liable to be dismissed with no order for cost. Hence the following order:

ORDER

Result of our findings above is to hold that these review petitions lack merits. As such these are dismissed. No cost.

Accordingly the review petitions are disposed of.

Let the record of the review petitions and the original records be consigned to the record room after due compliance.

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)

Date: 20.10.2023