

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...
Review Application No. 290/00018/2019
(Original Application No.290/00371/2015)

Date of order : 20.12.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Mangi Lal s/o Shri Naindasji, aged about 55 years, resident of Rani Khurd, Tehsil-Desuri, Distt. Pali Rajasthan, presently employed on the post of Postal Assistant in the office of Pali Head Office, Pali (Rajasthan).

...Applicant
(By Advocate: Shri A.K.Kaushik)

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Communication & Info Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi- 110 011.
2. The Director Postal Services, Office of the PMG, Western Region, Jodhpur-342001
3. Superintendent of Post Offices, Pali Division, Distt. Pali, Marwar (Raj.) 306401

...Respondents

ORDER (By Circulation)

Per Mrs. Hina P.Shah

The present Review Application has been filed by the applicant for reviewing the order dated 14.11.2019 passed in OA No. 371/2015- Mangi Lal vs. M/o Communications, by which certain directions were issued on the basis of the

statements of the parties recorded at Bar with regard to the left out prayers of the applicant.

2. A bare perusal of the order dated 14.11.2019 reveals that at the time of hearing the matter, the learned counsel for the respondents submitted that substantial relief prayed for by the applicant has already been granted as he has been paid consequential benefits as a result of setting aside of his penalty order as per additional affidavit dated 12.04.2019. Hence, the OA has been rendered infructuous. After this submission of the learned counsel for the respondents, the learned counsel for the applicant submitted that the respondents have paid consequential benefits except HRA. He has also stated that the applicant has also prayed for interest on due amount @ 9% p.a. While noting the above submissions made by the parties at Bar, the Tribunal disposed of the OA with some directions regarding HRA and interest on the arrears of pensionary benefits.

3. Now by way of this Review Application, the applicant pleaded that at the time of hearing various facts and grounds mentioned in the pleadings were argued and all the left out claims were pressed. Only two major reliefs were

left out i.e. regarding payment of HRA for the interregnum period and the other was regarding the grant of benefits of 3rd financial upgradation under MACP which was being denied on the basis of subsequent event/rules. The claim regarding 3rd MACP has not been examined and the question of accepting or rejecting the same did not arise. Despite of specific pleadings made in respect of 3rd MACP and the counsel appearing has also argued the case, but the same has not been taken note of. This has resulted in rejecting the claim of applicant without examining the legal right of consideration of promotion of the applicant.

4. Considered the averments made and the documents available in the Review Application. When the OA was finally heard, the contention of the learned counsel for the respondents was that substantial relief prayed for by the applicant has been granted, therefore, the OA has become infructuous. On the other side, the learned counsel for the applicant controverted only to the extent that the respondents have paid consequential benefit except HRA and that the applicant has also prayed for interest on due amount. The applicant was satisfied with regard to other reliefs. He only pressed his grievance with regard to the

relief of HRA and interest and accordingly, noting the above submissions of the parties, the Tribunal issued directions only with regard to these pending issues. Now raising the issue that several other reliefs were prayed but these were not considered by this Tribunal cannot be accepted in Review Application as it does not amount to error apparent on the face of record. If the said plea of the applicant is accepted, it will amount re-hearing of the original matter again, which is beyond the scope of review.

5. The scope of review has been considered by the Hon'ble Apex Court in the case of **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.**, reported in **(2008) 8 SCC 612** wherein in paragraphs 22, the Hon'ble Apex Court has held as under :-

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

6. The scope of review has also been considered by the Hon'ble Apex Court in Review Petition (Crl.) No.453 of 2012 in Writ Petition (Crl.) 135 of 2008 in the case of Kamlesh Verma vs. Mayawati and Ors. vide judgment dated 8th August, 2013, wherein in paragraphs 13, 14 & 15, the Hon'ble Apex Court has held as under:-

13) In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court, in Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. & Ors., (2005) 6 SCC 651, held as under:

"10.In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

14) Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd., (2006) 5 SCC 501, held as under:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of "second innings" which is impermissible and unwarranted and cannot be granted."

15) Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

7. Hence, viewing the matter in the light of the ratio decided by the Hon'ble Apex Court in the aforesaid cases, we do not find any error apparent on the face of record for reviewing our order dated 14.11.2019. Therefore, the Review Application is dismissed by circulation.

**(ARCHANA NIGAM)
ADMV. MEMBER**

**(HINA P.SHAH)
JUDL. MEMBER**

R/

