

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**LIBRARY**R.A/350/15/2014
(OA 378/2011)

Date of Order: 27.09.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Tapas RoyApplicant

Vrs,

Union of India & Ors.Respondents

For the Applicant(s): Applicant in person

For the Respondent(s): Mr. K.Roy, Counsel

ORDERBidisha Banerjee, Member (J):

This R.A. has been filed on 12.08.2014 to seek review of the order dated 16.05.2014 passed in O.A. No. 378/2011.

2. The grounds for review, primarily, are that;

(i) Although the applicant had the experience certificate in Plumbing, he did not submit the same as details of the post was not disclosed.

(ii) This Tribunal failed to consider the fact that since the applicant possessed ITI certificate in Electrician Trade, his name was sponsored by Employment Exchange as eligible candidate and he was even called by the Principal, Jawahar Navodaya Vidyalaya, Burdwan to appear at the selection test.

(iii) He had submitted a Biodata where he mentioned about his certificate in ITI (Electrician) and he had submitted the Biodata pursuant to the direction issued by the Principal on 17.08.2009.

3. We note that O.A. No. 378/2011 was dismissed by the Tribunal vide order dated 16.05.2014 having recorded as under:

"We also find that the applicant was never given any trade certificate by any authorities and the certificate the applicant is trying to rely upon is a working certificate as an Instructor of Electrical House Wiring and Motor Winding under WBSCV&T in Maliara Rajanarayan High School which school was accorded provisional recognition for induction of Class VIII pass vocational course, that too for six months for the academic session of 2006 only. Thereafter no document has been produced to show that the said recognition was extended from time to time. The said recognition as we find, is granted to impart training of Class VIII pass level short term vocational course for six months in Blood Collection Assistant, Electrical House Wiring and Motor Winding and Tailoring. The applicant does not seem to be imparted any training by the said school. Rather he was appointed as Instructor of Electrical House Wiring and Motor Winding. In other words he did not possess any trade certificate in Electrical House Wiring and Motor Winding vocational course or plumbing from a recognized Institute, as required in terms of essential qualification prescribed in the recruitment notification. The applicant has failed to convince us that he possessed the requisite trade certificate in terms of vacancy notification.

9. *In such view of the matter we feel that the decision of the authorities taken on 26.10.10 need not be interfered with."*

4. It is worth mentioning that the scope of review of an order is provided under order 47 Rule 1 CPC, which runs as follows:-

"Any person considering himself aggrieved-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed, or

c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."

5. In substance, a review is maintainable on the following grounds, as stipulated by the statute:-

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- ii) Mistake or error apparent on the face of the record;
- iii) Any other sufficient reason.

6. Tribunal's power to review its own order in such grounds as enumerated supra, is well recognised. **[Judgment of Hon'ble Apex Court in case of Gopal Singh vs. State Cadre Forest Officers' Assn. and Others, (2007)9 SCC 369].**

7. The Hon'ble Apex Court on numerous occasions had deliberated upon the very same issue arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. In **Aribam Tuleshwar Sharma v Aribam Pishak Sharma, (1979) 4 SCC 389=AIR 1979 SC 1047**, the Hon'ble Apex Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code of Procedure was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to the Apex Court, it was held as under:

*"It is true as observed by this Court in *Shivdeo Singh v State of Punjab, AIR 1963 SC 1909* there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the*



time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(Emphasis added)

8. In **Parson Devi & Ors. vs. Sumitri Devi & Ors.**, (1997) 8 SCC 715, the

Hon'ble Apex Court opined that:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

(Emphasis added)

9. The Hon'ble Apex Court also in the case of **State of West Bengal and Ors.**

Vs. **Kamal Sengupta and Anr.**, reported in (2008) 8 SCC 612 held as under:-

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

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."

10. The principles which can be culled out from the above noted judgments are:

- (i) *The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.*
- (ii) *The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
- (iii) *The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) *An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*
- (v) *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- (vi) *A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.*
- (vii) *While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*
- (viii) *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.*

11. In the present Review Application, we note that this Tribunal while deciding the O.A. had taken note of the fact that the essential qualification required was at



least two years' experience in Electrical Installation, Wiring and **Plumbing Work** but the applicant had failed to demonstrate by way of a certificate that he had experience in Plumbing Work. Along with the R.A. the applicant has annexed some documents, which do not show that he had experience in Plumbing Work. Applicant has given a certificate dated 11.09.2019 from Maliara Rajnarayan High School, which also does not speak that he has experience of plumbing work.

The post being Electrician-cum-Plumber and the essential qualification being specifically mentioned in the notification, the applicant had no right to be granted appointment when admittedly he had no experience of plumbing work.

12. We also note that the selection itself was scrapped as evident from communication of Deputy Commission dated 26.10.2010, which reflects as under:

"To,

*The Principal
JNV, Burdman
(W.Bengal)*

Sub: Regarding appointment of Electrician-cum-Plumber

Ref.- F.no. 1-5/JNV-BWN/Appttt.'2010-11/328 dated: 26-08-10

Sir,

None of the candidates has experience of Govt./Autonomous organization as per the norms of NVS. Hence the proposal is rejected.

You are instructed to be very careful in carrying out the recruitment process. A casual and careless attitude may lend you and the approval committee in trouble. Each step should be taken strictly according to the provision of be Recruitment Rules. You are directed to initiate the proposal afresh."

We would further note that out of the candidates, who were shortlisted on the basis of their marks in Matriculation, the applicant was way below the others as evident from Annexure-A/6.

13. In view of the discussions made above, we find no merit in the R.A., which is dismissed accordingly. No costs.


(Dr. Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)

RK