

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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Review Application No.290/00003/2020
with
Misc. Application No.290/00055/2020
in
Original Application No.290/00254/2008

Decided on : 28.04.2021

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

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Mohd. Sabir S/o Sh. Abdul Gani, R/o Plot No.196-A, Bapu Colony, in front of New Kohinoor Cinema Hall, Jodhpur.

Applicant

VERSUS

1. Union of India through the General Manager, North Western Railways, Jaipur (Rajasthan).
2. Assistant Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.

Respondents (Applicants in this RA)

(By Advocate: Mr. Kamal Dave)

ORDER
(BY CIRCULATION)

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Hon'ble Smt. Archana Nigam, Member (A):-

The Misc. Application No.55/2020 for condonation of delay is allowed for the reasons stated therein. Accordingly, the delay in filing of the RA is condoned.

2. The present Review Application has been filed by the applicants (respondents in OA) seeking review/recall of the order dated 19.03.2020 passed in OA No.290/00254/2008. By way of this RA, the review applicants want re-hearing of the matter, on which finding has already been given by this Tribunal in the order dated 19.03.2020.

3. We have gone through the Review Application filed by the applicants. It would be pertinent to mention here that the scope of review is very limited and the applicants (respondents in OA) cannot seek review for correction of the view taken earlier or for rehearing of the matter.

4. The scope for a review application is clearly defined in various orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon'ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon'ble Supreme Court culled out the principles which 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."

5. Further, 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 re-appreciate 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."*

6. We may also add that the Hon'ble Supreme Court in the case of *Meera Bhanja (Smt) v. Nirmala Kumari Choudhury (Smt)* (1995) 1 SCC 170 held as under :

"The 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, CPC. The review petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent 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 points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226."

7. It is also seen that the present Review Application is not being sought on the ground of discovery of new material or evidence. Further, the term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the cases 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 grounds a different view could have been taken by the Court/Tribunal on a point of fact or law. While exercising the power of

review, the Court/Tribunal concerned cannot sit in appeal over its judgment/decision. If the matter is considered in the aforesaid legal proposition, we are of the view that the applicants has not made out any case for reviewing the judgment dated 19.03.2020.

8. Viewing the matter in the light of the above ratio of the Hon'ble Apex Court and also in terms of the provisions contained in Section 22(3) (f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 CPC, we find no merit in the present Review Application and the same is accordingly dismissed by circulation.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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