

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

R.A.No.1/2005 and
M.A. NO.55/2005
IN O.A. NO.1023/1997

Date of order:14.3.05

Present: SHRI MUKESH KUMAR GUPTA, MEMBER (J)
SHRI M.K. MISHRA, MEMBER (A)

Sri Asoke Kumar Dutta

vs.

Union of India & Ors.
(Department of Tourism)


O R D E R

(BY CIRCULATION)

This review application has been taken up under Circulation in terms of the provisions of Rule 17(1) of CAT (Procedure) Rules, 1987.

2. By the present R.A., the applicant seeks review of an order dated 30.11.2004, copy of which was made available to him on 20.11.2004, on the ground that there is a need to review the aforesaid order as the applicant's case for adhoc promotion is liable to be considered at least with effect from 14th September, 1994 when Smt. Sandipta Saha was allowed the said promotion to the post of Information Assistant with consequential benefits.

3. The applicant has filed M.A. No.55/2005 seeking condonation of delay in preferring the present R.A which was filed on 27th January, 2005 though the



certified copy of the order dated 30.11.2004 was made available to the applicant on 20.12.2004, by stating that he was suffering from Hernia and having acute abdominal pain and could not contact his lawyer.

4. We have carefully perused the aforesaid order dated 30.11.2004 as well as the present R.A. and M.A for condonation of delay.

5. It is not the case of the applicant that the aforesaid order which was an oral order, has any error apparent on the face of the record. A perusal of the present R.A goes to show that the applicant wants to reargue the whole case on merits which is not permissible within the limit of jurisdiction available under Order 47 Rule 1 CPC read with Section 22 (3) (f) of the Administrative Tribunals Act, 1985. It is further seen that such contention was not even raised at that point of time, and therefore, the contention raised now is an afterthought.

6. It is well settled law that as laid down by the Hon'ble Supreme Court in (1995) 1 SCC 170, Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury, that:

"8. It is well settled that 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. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under




Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p.390 para3).

'It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the 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 definitive 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 records 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court.'

9. Now it is also to be kept in view that in the impugned judgement, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of the 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. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale wherein K.C. Das Gupta J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an



error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ." (emphasis supplied)

4. In our considered opinion the aforesaid judgement fully applies in the facts and circumstance of the present case as no error apparent on the face of the record of the order dated 30.11.2004 has been clearly pointed out. If the applicant was aggrieved by the promotion order of Smt. Sandipta Saha, w.e.f 14.9.1994, he ought to have filed the application against the said order, which was not the case as he had filed the O.A. No.1023/1997 only on 5.9.1997 i.e., much beyond the limitation prescribed of one year under Section 21 of the A.T. Act, 1985. Moreover, the relief prayed for in the O.A did not show that the applicant sought promotion with effect from 14.9.1994, as prayed for in the review application.

5. In such circumstances, the present review application is devoid of any merits and accordingly the same is dismissed. No costs. Since we have passed order on merits. no further order is required in the M.A. No.55/2005.


(M.K. MISHRA)
MEMBER (A)


(MUKESH KUMAR GUPTA)
MEMBER(J)

mr.