

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 14 of 2010

In

Original Application No. 182/2008

This the 14th day of July, 2010

Hon'ble Dr. A.K. Mishra, Member-A)

Chief Post Master General, U.P., Lucknow & Others

..... Review Applicants.

Versus

Shakeel Ahmad .

.....Respondent

ORDER (Under Circulation)

This Review Application has been filed against the order dated 4.9.2009 in O.A. no. 182 of 2008 after delay of about 09 months beyond the limitation period. The application for condonation of delay has been filed stating that there were compelling circumstances which were beyond the control of respondents in O.A., leading to delay in filing this Review Application. Although, the explanation given is not satisfactory, but in the interest of justice, the delay is condoned and Review Application has taken up for consideration.

2. The grounds taken in Review Application is that the Tribunal did not properly appreciate the facts of the case and that its order was illegal and arbitrary and made "without going into the depth of the case"; that it was based on assumption and presumption, surmises and conjectures; that Rule 73 of CCS (Pension) Rules has not been considered by the Tribunal; that there was no need to issue any show cause notice to the applicant, in O.A., as the applicant, therein, was not a regular employee; that he was a time bound labourer engaged as per need and requirement of the department and could not claim rights of a regular employee.

3. I am constrained to observe how such a frivolous application has been filed on affidavit by a responsible officer of respondents-department. At paragraph 14(b) relating to ground, it has been



mentioned that Rule 73 of CCS (Pension) Rules has not been considered by the Tribunal. It is not understood how Rule 73 of the aforesaid Rules which is about adjustment and recovery of dues other than dues pertaining to a government accommodation before retirement of a government employee is at all relevant in respect of the subject matter, which was discussed in fairly great detail ⁱⁿ the order under review. Similarly, the ground taken about show cause notice is also ir-relevant as the impugned order in the O.A. was not set-aside on the ground that no show cause notice was issued to the applicant (respondent in the present Application). At paragraph 14(f) of the affidavit, the Review Application has described the judgment and order of this Tribunal as illegal, arbitrary, based on surmises and conjectures without caring to substantiate these allegations in any manner whatsoever. Similarly, at ground (b) of paragraph 14, it is stated that the applicant could not claim as a regular employee of the department as he is a time bound labourer and further that this fact had not been considered by the Tribunal. Nothing can be farther from the truth. I am quoting the relevant portion of paragraph 6 of the order under review.

“ xxxxxx It is not the case of the applicant that regular posts were advertised and he applied for appointment. The applicant is not claiming the benefits of regular employee. His grievance is that the daily wages which he was getting as per the departmental instructions have now been denied to him. At paragraph 10 of the counter affidavit, a similar distinction is sought to be made between contingency paid regular employee and daily wagers. The department itself has clarified that all of them belong to one category of casual workers. The other ground taken was that the wages were reduced due to audit objection. It does not stand to reason how the audit can object to payment of wages as per government instructions and why the correct position could not be clarified to the audit.”

4. It is well known that the scope of review is very limited. A Review application is not to be treated as an appeal. I cannot be possibly sit in judgment over the order passed by this Tribunal. The phrase error apparent on the face of the record has been elucidated by the Supreme Court in the case of **State of West Bengal and**



Others Vs. Kamal Sengupta and Another reported at (2008) 8 SCC 612. The relevant portion of this judgment is extracted below:

"The term 'mistake or error apparent' by its very condition 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."

5. In view of the foregoing, I do not find any merit in this Review Application, which is accordingly dismissed. However, I direct that a copy of this order be sent by the Registry to the Chief Post Master General, U.P. Circle, Lucknow who may take appropriate action as to how frivolous submissions have been made by an officer of the Department in the affidavit filed before this Tribunal.


(Dr. A.K. Mishra)
Member-A

Girish/-

OK
copy of order
dated 14-7-2010
Rr pmm
15-7-2010
Notice issued
to day 19-7-10
DK