**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW**

**Review Application No. 18/2013**
**In**

**Original Application No. 98 of 2009**

**This, the 17th day of December, 2013.**

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)**

Parshuram Yadav, aged about 64 years, son of Late Ram Prasad, resident of village Rampur, Halwara,Post –Sarairashi, District, Faizabad.

**Applicant**

**By Advocate Sri S. Srivastava.**

**Versus**

1. Union of India through Director General, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Senior Superintendent of Post Offices, Faizabad Division, Faizabad.
4. Assistant Superintendent of Post Offices, Faizabad Division, Faizabad.
5. Senior Post Master, Faizabad.
6. Sub Division, Inspector ,East Faizabad.
7. Sub Post Master , Gaparadih,Faizabad.

Respondents

ORDER (Under Circulation)

**By Hon'ble Mr. Navneet Kumar, Member (J)**

The present Review Application is preferred by applicant for reviewing the order dated 31st October, 2013 passed in O.A. No. 98/2009 whereby the Tribunal dismissed the original application.

2. Learned counsel for the applicant has pointed out through this review application that the sole ground of rejection of the O.A. is that the applicant has not attained temporary status whereas, it is submitted by the learned counsel for the applicant that the applicant has annexed Annexure-5 with O.A. by which the Senior Superintendent of Post Offices issued Memorandum regarding entitlement of various benefits like leave, GPF, LTC, Medical assistance, bonus etc. to the temporary status employee and also annexed a list of 8 contingency paid staff and the name of the applicant is at serial No. 5 . Learned counsel for the applicant has also pointed out that the applicant got temporary status Group D employee w.e.f.30.11.1992. In pursuance of the Directorate letter daed 30.11.1992 and 23.2.1993 and the applicant got the said benefits vide Memorandum dated 21.6.1996.

3. While deciding the O.A., the Tribunal considered all these aspects and the applicant through this review application has categorically pointed out that the applicant got temporary Group D employee status w.e.f. 30.11.1992 but the said order is not available on record. In the event of such situation, the applicant wants to reopen the issue a fresh which has already decided by the Tribunal.

4. The issue in regard to interference in the review application and the scope of review lies only on the grounds mentioned in order 47 Rule 1 read with Section 141 CPC. The party must satisfy the court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. It is also clear that a review can be allowed only when some mistake or error on the face of record is found or on any analogous ground. It is also to be pointed out that review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

5. While deciding the review Petition No.294/2001 (Chandra Bhushan Pandey, the Hon'ble High Court has been pleased to observe as under:-

> **"8. In M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, The Apex Court held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.**
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> **9. Hon'ble the Apex Court in Subhash Vs. State of Maharastra& Another, AIR 2002 SC 2537, the Apex Court emphasised that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review."**

7. As observed by the Hon'ble Apex Court in the case of **Meera Bhanja v. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170** , the Apex Court has decided the issue of review and has observed that review proceedings are not by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC and review petition is required to be entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has observed as under:

> **"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 AribamTuleshwar Sharma v. AribamPishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3).**

**"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 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court."**

**An error which has to be established by a long-down 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 a writ."**

8. As categorically pointed out that the Hon'ble Apex Court that who has decided the matter cannot re-apprise the entire issue afresh. Only the typographical error or the error apparent on record can be rectified in the Review Application. By means of the present Review Application the applicant tried to reopen the entire matter afresh. The Tribunal while deciding the R.A. No. 34 of 2011 & O.A. No. 2232 of 2010 has relied upon the decision of the Hon'ble Apex Court in the case of **State of West Bengal and Ors. –vs- Kamal Sengupta and Another, 2008 (3) AISLJ 231,**

**"5. In the matters concerning review the Tribunal is guided by Rule 47(1) of CPC. The parameter of a review application is limited in nature.** The Apex Court has laid down the contours of a review application in the **State of West Bengal and Ors. Vs KamalSengupta and Another (Supra)/**

**At para 28 the Hon'ble Apex Court has laid down eight factors to be kept in mind which are as follows:**

**(1) The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.**

**(2) The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.**

**(3) "that any other sufficient reasons" in order 47 Rule 1 has to be interpreted in the light of other specified grounds.**

(4) 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 the record.

(5) An erroneous decision cannot be correct under review.

(6) An order cannot be reviewed on the basis of subsequent decision/ judgment of coordinate/ larger bench or a superior Court.

(7) The adjudication has to be with regard to material which were available at the time of initial decision subsequent event/ developments are not error apparent.

(8) Mere discovery of new/ important matter or evidence is not sufficient ground for review. The party also has 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 earlier before the Tribunal.

9. While deciding the **Review Application No. 4/2011 in O.A.No. 451/1993**, this Tribunal observed as under:-

"11. It is also worthwhile to mention that this litigation has been pending for the last three decades and most of the applicants are now on the verge of their age of retirement as already observed in para 18 of the judgment of this Tribunal. When this litigation started, the initial stand of the reviewist was that on the basis of record of pay sheets and paid vouchers etc., it has been found by the Committee that out of 30 applicants, no body has completed continuous 120 days of working. When the matter went before the Honble High Court and it was directed that the relevant record may be inspected, the entire record was not produced. However in furtherance of the orders of the Honble High Court, the available record was inspected at the residence of the learned Counsel for petitioners (Rlys.) Sri Anil Srivastava who is learned counsel for the present reviewist. A chart was prepared there also which was duly verified by Divisional Finance Manager , NR, and it was also brought on record. The Honble High Court then observed that prima facie it appeared that sufficient number of petitioners have discharged duties for 120 days and have acquired temporary status under the Railway Establishment Manual. Thus, a prima facie finding has already been recorded by the Honble High Court in favour of the applicants. However, finally the matter was remitted back to this Tribunal for deciding it afresh. Accordingly, parties appeared before this Tribunal and the applicants requested for summoning remaining 56 pay sheets and paid vouchers on the ground that out of total 99 pay sheets /paid vouchers, inspection of only 44 was done during pendency of the matter before the Honble High Court. After remittance of the matter to the Tribunal by the Honble High Court, the D.R.M. concerned is said to had approached the Vigilance Department and obtained those remaining 56 pay sheets/ paid vouchers and produced the same in this Tribunal for inspection. After the joint inspection of those papers, the above chart was prepared. Thus, it appears that the reviewist had been taking a pedantic approach in the matter instead of pragmatic approach from the beginning of the litigation about 30 years before. Initially they denied the claim of 120 days of continuous working without producing the record on some pretext or the other and then producing it in part before the Honble High Court and then producing the remaining part before this Tribunal when no alternative was left with them. Then, after joint inspection, an affidavit was filed on behalf of the applicants enclosing the

**relevant chart duly counter signed by the representative of the Railways saying that except two all the applicants have completed continuous 120 days of working. Reviewist had also an opportunity to controvert this averment but they did not . Ultimately, the matter has been finally decided. Now, they have filed this review petition taking certain new points altogether as already discussed."**

**10. In the case of Satyanarayan laxminarayan Hegde and others, Vs. Mallikarjun Bhavanappa Tirumale reported in AIR, 1960 SC 137, the Hon'ble Apex Court has been pleased to observe as under:-**

> **" 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. As the above, discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal Viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari."**

11. In another case of **Parsion Devi and Others Vs. Sumitri Devi and Others reported in (1997) 8 SCC -715,** the Hon'ble Apex Court has been pleased to observe as under:-

> **"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 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 limited purpose and cannot be allowed to be "an appeal in disguise."**
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> **10. Considered in the light of this settled position we fine that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned**

> order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

12. The Hon'ble Apex Court in the case of **Rajendra Kumar and Others Vs. Rambhai and Others reported in (2007) 15 SCC 513, has dealt with the question of review and its maintainability and has been pleased to observe as under:-**

> 6. The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice . In the absence of any such error, finality attached to the judgment/order cannot be
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> 7. Coming to the merits of the case, suffice it to say that on perusal of the order, which has been reviewed by the order under challenge did not suffer from any serious illegality, which called for correction by exercise of review jurisdiction.
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> 8. It is relevant to note here that the deceased was holding the post of Supervisor in Women and Child Welfare Department, Government of Karnataka at the time of her death and she was aged about 48 years at that time. The Salary drawn by the deceased, as evident from the salary certificate produced as additional evidence was Rs. 2570 p.m. The multiplier, which had been accepted by the Division Bench in the previous order, was 10. In the circumstances of the case, Multiplier of 10 was rightly taken. Thus, on merit also no interference with the order was called for."

13. **Inderchand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs. Reported in (2009) 14 SCC 663**

> 10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

**11. Review is not appeal in disguised. J In Lily Thomas Vs. Union of India this Court held@SCC P. 251, Para 56)**

> **"56. It follows , therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."**

14. Considering the facts of the case and law laid down by the Hon'ble Apex Court, we do not find any ground to interfere with the present review petition. Not only this, it is also clear that a party is not entitled to seek a review of judgment for the purpose of rehearing and fresh decision in the case. Review petition lacks merit and as such, it deserves to be dismissed. Accordingly, Review Petition is dismissed. No cost.

**(Navneet Kumar)**
**Member (J)**

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