

By Circulation

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

This the 12th day of May, 2014

Review Application No. 16 of 2014

In re.

Original Application No. 289 of 2006

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member -A**

Gokaran Singh, aged about 52 years, S/o Sri Uday Pratap Singh, R/o E-57-F NE Railway Colony, Nehru Nagar, Aishbagh, Lucknow

By Advocate: Sri Pankaj Awasthi.Review Applicant

Versus.

1. Union of India through the General Manager, NER, Gorakhpur.
2. DRM, NER, Lucknow.
3. DRM (P), NER, Lucknow.
4. Radhey Mohan Srivastava, aged about 45 years, S/o Sri K.M. Srivastava, R/o C-45 Pawanpuri, Alambagh, Lucknow.

With

Review Application No. 17 of 2014

In re.

Original Application No. 339 of 2006

Gokaran Singh, aged about 52 years, S/o Sri Uday Pratap Singh, R/o E-57-F NE Railway Colony, Nehru Nagar, Aishbagh, Lucknow

By Advocate: Sri Pankaj Awasthi.Review Applicant

Versus.

1. Union of India through the General Manager, NER, Gorakhpur.
2. DRM, NER, Lucknow.
3. DRM (P), NER, Lucknow.
4. Radhey Mohan Srivastava, aged about 45 years, S/o Sri K.M. Srivastava, R/o C-45 Pawanpuri, Alambagh, Lucknow.

.....Respondents

J. Chandra

O R D E RPer Ms. Jayati Chandra, Member-A

Both the Review Applications have been filed by private respondent no.4 in the Original Application No. 289 of 2006 and applicant in O.A. No. 339 of 2006 under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of common judgment and order dated 24.3.2014.

2. The Review Application is considered under circulation rules as provided under Rule 17 of CAT (Procedure), Rules, 1987. The O.A. filed by the Radhey Mohan Srivastava, applicant in O.A. no. 289 of 2006 has been allowed whereas O.A. no. 339 of 2006 has been dismissed by this Tribunal vide common judgment and order under review. The operative portion of the order under review is as under:

"In this case, the applicant, who was admittedly, given the eligibility grade of Rs.5500-9000 on 01.05.2003 prior to the applicant of O.A.No.339/2006 the benefit of the above provision of IREM must be extended to him. Hence, O.A.No.289/2006 is allowed. The impugned order/letter dated 12.12.2005 and also the office order dated 07.03.2006 are hereby quashed and the respondents are directed to grant the benefit of promotion to the applicant on the date of his eligibility of having completed 2 years service from 01.05.2003. Hence, the O.A.No.289/2006 is allowed and O.A.No.339/2006 is dismissed has having no merits. No order as to costs.

3. We have gone through the order under review and have also looked into the grounds taken for review in both the Review Petitions. It is noteworthy that the order of the Tribunal was passed after hearing the both sides. The O.A. no. 289 of 2006 has been allowed while the O.A. no. 339 of 2006 has been dismissed on merits after hearing the counsel for the parties at length. In view of the law settled by the Apex Court, if the plea or ground taken in the Review Application is accepted and the order is reviewed in favour of the review applicant, it would amount to an order which can be passed in writ or appellate jurisdiction only. In the case of **Meera Bhanja (Smt) Vs. Nirmala Kumar Choudhary (Smt.)** reported in (1995) 1 SCC 170 it has been held by the Hon'ble Supreme Court that "the Review petition can be entertained only on the ground of error apparent on the face of

J Chandra

record and not on any other ground. Any 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. Re-appraisal of the entire evidence or error would amount to exercise of appellate jurisdiction which is not permissible" by way of review application. This is the spirit of order XLVII, Rule 1 of CPC as has been held in this judgment of Hon'ble Supreme Court.

4. In the case of **Parson Devi and Others Vs. Sumitri Devi and Others** reported in (1997) 8 SCC -715, the Hon'ble Supreme Court has held 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."

10. Considered in the light of this settled position we find 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

J. Chaudhary

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."

5. The Review is not an appeal in disguised as held by Hon'ble Supreme Court in the case of J N Lily Thomas Vs. Union of India. The relevant portion reads as under:

"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."

6. In view of the above, we do not find any merit in both the Review Applications and the same are dismissed under circulation.

J. Chandra.

(Ms. Jayati Chandra)
Member -A

VR. Agarwal,
(Navneet Kumar)
Member-J

Girish/-

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copy to Farid
Dated 12-5-14
Rehman
16-5-14