

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**M.A. No. 332/02383/2014
In**

**Review Application No. 332/00053 of 2014
In**

Original Application No. 134 of 2007

This, the th // day of November, 2014.

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

1. Union of India through Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Director, Postal Services, o/o Chief Post Master General, U.P., Lucknow.
3. SSRM, 'O' Division, Lucknow RMS, Charbagh, Lucknow.
4. Sri R. D. Yadav, E. O. Assistant Superintendent, Office Supervisor, O/o SSRM, 'O' Division, Lucknow.

Reviewists/Applicant

By Advocate Sri G. K. Singh.

In RE:

Bodh Prakash

.....Applicant.

Versus

Union of India & Others

....Respondents.

ORDER (Under Circulation)

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

The present Review Application is filed under Section 22(3) (f) of AT Act, 1985 read with Rule 17 of CAT (Procedure) Rules 1987 to review the order dated 17.9.2014 passed in O.A. No. 134/2007. The review applicant has also preferred an application for condonation of delay in filing the review application.

2. While preferring the review application, the review applicant has categorically indicated that the Tribunal while passing the order dated

17.09.2014 has not been considered the version in the counter reply and has also not considered the Circle Level Investigation Report which shows the total loss is of Rs. 94,816/-. While deciding the O.A., the Tribunal has categorically indicated that the charge sheet dated 21.7.2005, the loss of Rs. 29,000/- is shown, whereas, the disciplinary authority come to the conclusion that a total loss occurred to a tune of Rs. 94,816/- . The learned counsel appearing on behalf of the O.A. applicant has categorically indicated that while coming to the conclusion that the total loss is amounting to Rs. 94,816/- , the disciplinary authority has not provided any opportunity to the applicant to rebut the submissions . As such, the said loss cannot be treated to be a loss on account of the applicant only. Apart from this, it is also pointed out in the judgment that a sum of Rs. 47408/- is recovered from Mail Motor Contractor. In the review application, the review applicant fail to indicate the grounds about the disciplinary authority came to the conclusion about the total loss as shown in the Circle Level Investigation Report and whether the same was put to the notice to the applicant before coming to such a conclusion.

3. It is also to be pointed out that the Circle Level Investigation Report annexed as Annexure R-2 as well as the letter dated 16.6.2006 as contained in Annexure R-3 to the present review application is neither available on record at the time of decision of the O.A, neither this fact was brought through counter reply, even it is not indicated that on what basis the disciplinary authority came to the conclusion that the total loss occurred to the department is amounting to Rs. 94,816/-.

4. Apart from this, the present review application is preferred with and application for condonation of delay.

5. As observed by the Hon'ble Apex Court in the case of **K.Ajit Babu Vs. Union of India 1997 (6) SCC 473 (para 4)**, while examining the provisions of Section 22(3)(f) of the AT Act and Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, the Hon'ble Apex Court laid down that right of review is available to the aggrieved person on

restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came up before the Full Bench of Andhra Pradesh High Court in the case of **G.Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others -2005(4) SLR 720.**

The matter was also examined by the Full Bench with reference to Section 22(3)(f) of the AT Act, 1985 and other relevant provisions of the CAT (Procedure) Rules, provisions of the Limitation Act etc. and it was held that a Tribunal has no jurisdiction to condone the delay in filing the Review Application. It was laid down that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either sub section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act. It may be mentioned here that provisions of Rule 19 of A.P. Administrative Tribunal (Procedure) Rules, 1989 which are similar to above Rule 17(1) of CAT (Procedure) Rules, 1987 were also considered which are as under:-

“ No application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed.”

6. Thus, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal unless reviewed or appealed against, attains finality . If such a power to review is permitted without any limitation then no decision would be final because the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Therefore, the public policy demands that there should be an end of legal cases.

7. The scope of review is very limited. As observed by the Hon'ble Apex Court in the case of **Meera Bhanja vs. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170** , that review proceedings cannot be considered 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 also been pleased to observe that while deciding the review, the matter cannot be re-apprised and only typographical error apparent on record can be reviewed.

8. The Hon'ble Apex Court in the case of *State of West Bengal and Ors. Vs. Kamal Sengupta and Another* reported in 2008 (3) AISLJ-231 laid down eight factors to be kept in mind while deciding the review application.

9. 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."

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 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."

10. the review applicant by means of present review application wants to reopen the entire issue a fresh.

11. As per the observations of the Hon'ble Apex Court, the present review application is liable to be dismissed on the ground of limitation as well as on the ground of merit.

12. Accordingly, the review application is dismissed. No order as to costs.

J. Chandra

(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member(J)

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OK
Copy of order
Dated 11.11.14
Proper
13-11-14