

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00010/2014 in O. A. No. 426/2011

This the 21st day of March, 2014

Hon'ble Sri Navneet Kumar, Member (J)

R.K. Biswas aged about 56 years son of Sri N.C. Biswas resident of B-108/2, Manak Nagar, Lucknow.

Revisionist

By Advocate: Sri J.P. Mathur

Versus

1. Union of India, Ministry of Railways/ Railway Board, Rail Bhawan, New Delhi through its Secretary.
2. Director General, Research Design and Standards Organisation Ministry of Railways, Manak Nagar, Lucknow.
3. Executive Director, T.M. Directorate, Research Design and Standards Organisation, Ministry of Railways, Manak Nagar, Lucknow.

Respondents

ORDER (Under Circulation)

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present review application is preferred by the applicant for reviewing the order dated 17.1.2014 passed in O.A. No. 426/2011, passed by the Tribunal

2. Along with review application, the applicant has also filed an application for condonation of delay, supported with an affidavit, indicating therein that the applicant came to know about the judgment only on 5.3.2014, as such the delay in filing the review application be condoned.

3. While filing the review application, the learned counsel for applicant has pointed out that the Railway Board has already informed the RDSO about the decision of Ministry of Labour and Employment who has not accepted the request to exempt the RDSO from the provision of Industrial Dispute Act and also annexed a letter dated 12.4.2013 along with the review application and has also pointed out that the said letter was concealed by the respondents during the course of arguments. The learned counsel for applicant has categorically pointed out that the grievance of non implementing the

HOER as provided u/s 130 of Railways Act after the notification of RDSO as Zonal Railway requires reconsideration. That since concerned ministry has not accepted the request of the Railway Board and rejected the same through letter dated 12.4.2013, as such the fresh cause of action has taken place and the applicant is at liberty to challenge the same if so advised.

4. The scope and power of Tribunal to review its decision has been elaborately laid down by the Hon'ble Apex Court in the case of **State of West Bengal and others Vs. Kamal Sengupta and another** reported in (2008) 8 SCC 612 after taking into account almost the entire case law on the subject of review. It has been held that an error which is not self evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22 (3) (f) of AT Act. An erroneous decision cannot be corrected in the guise of power of review. It is further held that review can not partake the character of an appeal. The Hon'ble Court observed as under:

“The term mistake or error apparent “by its very connotation 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. Review is not the remedy for the applicant to correct an erroneous judgment. The Tribunal has no power to review its judgment if there is no error apparent on face of record.

6. By means of the present review application, the applicant wants to reopen the entire issue afresh.

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 Hon'ble Apex Court has been pleased to decide the issue of review and has observed that 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 of CPC and review petition is required to be entertained only on the ground of error apparent on the face of record.

8. As categorically pointed out by the Hon'ble Apex Court that who has decided the matter cannot re-appraise 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 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 (supra)**:

"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 Kamal Sengupta 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. 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.”

10. In another case of **Parson 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."

11. In the case of **Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs.** Reported in (2009) 14 SCC 663 , the Hon'ble Apex Court has been pleased to observe as under:-

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. In **Lily Thomas Vs. Union of India**, the Hon'ble Apex Court held 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."

12. Perusing the application and ground of review , it is apparent that in the opinion of applicant, the judgment is erroneous and he is seeking its correction in the guise of exercise of power of review. In the case of **Gopal Singh Vs. State Cadre Forest Officers Association 2007 (9) SCC 369**, it was held that the Tribunal could not travel out of its own jurisdiction to write a second order in the name of reviewing its own judgment and further that the Tribunal could not sit over its own judgment as an appellate authority.

13. I have gone through the review application. I do not find any mistake or error apparent on the face of record. Since, the scope of review application is very limited, I do not see any error apparent in the judgment.

14. Considering the facts of the case and law laid down by the Hon'ble Apex Court, I do not find any ground to interfere with the present review petition. Review petition lacks merit and as such it



deserves to be dismissed. Accordingly, Review Petition is dismissed.

No order as to costs.

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-

ok
copy of order
dt. 21.3.2014

Approved
on 25-3-14

AS