

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/0018/2014 in O. A. No.419/2011

Reserved on 22.5.2014

Pronounced on 29/5/2014

Hon'ble Sri Navneet Kumar , Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Smt. Neena Kureel aged about 53 years wife of Sri Virendra Kumar r/o 3/148, Vivek Khand, Gomti Nagar, Lucknow.

Revisionist

By Advocate: Sri A.Moin

Versus

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area Shaheedjeet singh Marg, New Delhi through its Chairman.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area Shaheedjeet singh Marg, New Delhi.
3. Education Officer, Kendriya Vidyalaya Sangathan, 18 Institutional Area Shaheedjeet singh Marg, New Delhi.
4. Principal , Kendriya Vidyalaya, Aliganj, Lucknow.
5. Smt. Jyoti Srivastva, TGT (Hindi) posted at Kendriya Vidyalaya ,Aliganj, Lucknow.

Respondents

ORDER

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

The present review application is preferred by the applicant for reviewing the judgment and order dated 15.5.2014 to the extent of holding and observing that no opinion /finding have been expressed by the Tribunal upon reliefs 8(ii) and 8(iv) of the O.A. and the same are left open with liberty to the applicant to challenge the same in a fresh original application. The grounds taken in the review application are that since on the above reliefs as prayed for in the O.A., no finding or opinion has been expressed by the Tribunal, as such there is error apparent on the face of record.

2. The applicants has also moved an application under Section 17(3) of the CAT (Procedure) Rules, 1987 for hearing the application for review in open court, as such the applicant was heard on 22.5.2014 and during the course of hearing, the applicant confined his prayer to the effect that the applicant be permitted to file a fresh O.A.

challenging the reliefs 8(ii) and 8(iv) as prayed for in the O.A.

3. The facts of the case are that the applicants was appointed as Primary Teacher in Kendriya Vidyalaya Sangathan, was transferred and the said transfer order was challenged by the applicant in the O.A. It is also to be pointed out that after the transfer order of the applicant, applicant made a representation and Tribunal directed the respondents to consider the said representation of the applicant. After giving due consideration, the same was rejected on merit. The learned counsel for the applicant has also relied upon a decision of the Tribunal passed in O.A. No. 235/2011 (Smt. Rama Bhadauria Vs. K.V.S. and others) and prayed that the observations made in the aforesaid order be extended to the applicant and the new transfer guidelines which were effective w.e.f. 1.4.2011 shall not be given effect to retrospectively and the same shall be given effect prospectively. The new transfer guidelines were issued and were given effect to w.e.f. 1.4.2011 and the said transfer guidelines were for non-teaching staff of Kendriya Vidyalaya Sangathan for smooth functioning of education activities in respect of students of K.V.S. The same was approved by the Board of Governors in its 89th meeting held on 3.11.2010 and two new Articles 71 (A) and 71 (B) are inserted in the Education Code for K.V.S. in place of Article 71 which will remain effective till 31.3.2011. While deciding the O.A., the Tribunal has clearly observed in para 7 of the judgment that it is submitted by the learned counsel for applicant that for counting of displacement points the direction issued in the case of Smt. Rama Bhadauria is to be followed and the amended guidelines be given effect prospectively and not retrospectively. As per the new transfer guidelines, K.V.S. shall strive to maintain equitable distribution of its employees across all locations to ensure efficient functioning of the organisation and optimize job satisfaction amongst the employees. While deciding the O.A., the Tribunal has also dealt with clause 13 of the guidelines which provides that the Commissioner with the approval from the

Chairman, KVS shall be the sole competent authority to transfer any employee to any place in relaxation of any or all the provisions. Not only this, the Tribunal while deciding the O.A. has also clearly indicated in para 15 of the judgment that the respondents will pass any further orders in terms of the new guidelines dated 1.4.2011 and it cannot be presumed that the respondent will act upon as per the old transfer guidelines.

4. While deciding the O.A., the Tribunal considered all prayers of the applicant including relief 8(ii) and 8(iv). as such granting any liberty to file fresh O.A., will amount to encroaching principals of res-judicata.

5. 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."

6. The Tribunal has no power to review its judgment if there is no error apparent on face of record.

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 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.

8. As categorically pointed out by 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.

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

"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 **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."

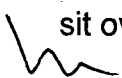
11. In the case of Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs. Reported in (2009) 14 SCC 663 , the Hon'ble Apex Court has been pleased to observe as under:-

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. We have gone through the review application and after going through the entire review application, we do not find any mistake or error apparent on the face of record. The scope of review application is very limited. However, it is clearly observed that the respondents will pass further orders in terms of new transfer guidelines. It is further observed that the respondents will act absolutely in accordance with new transfer guidelines given effect to w.e.f. 1.4.2011 prospectively and not retrospectively and the Tribunal in the case of Rama Bhaduarua has also observed that amended transfer guidelines have been wrongly implemented with retrospective effect, as such it was held arbitrary and respondents were directed to implement the amended guidelines prospectively. This fact is already considered by the Tribunal in the earlier order, as such no ground is made out to review the order or grant liberty to file fresh O.A.

14. With the above observations, Review Petition is dismissed. No order as to costs.

J. Chandra

(Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

HLS/-