

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00022/2014 in O. A.

No.222/2009

This the 7th day of July, 2014

**Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

1. Union of India through the General Manager, Northern Railway Railway, Baroda House, New Delhi.
2. The Deputy Chief Electrical Engineer(W) C&W Workshop, Northern Railway, Alambagh, Lucknow

Applicant

By Advocate: Sri B.B. Tripathi

Versus

Naveen Kumar aged about 44 years son of Sri V.P.Srivastava r/o c/o 549/172 Kha, Bara Barha, Alambagh, Lucknow.

Respondents

ORDER (Under Circulation)

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

The present Review Application is preferred by the applicant u/s 22(3)(f) of AT Act, 1985 for reviewing the order dated 10th April.2014 passed in O.A. No. 222 of 2009 by the Tribunal.

2. While preferring the present Review Application, the O.A. respondents taken a ground that large number of persons are in the waiting list whereas the vacancies under restructuring scheme are lesser in number in comparison to number of candidates, hence the case of the applicant could not be considered for non-availability of sufficient number of vacancies. Apart from this, it is also pointed out by the O..A. respondents that since the matter is under judicial scrutiny before the Hon'ble High Court, as such any direction issued to the respondents is not justified.

3. While deciding the O.A., these facts were brought to the notice of the Tribunal and the Tribunal has also indicated these facts in its order dated 10th April, 2014 and reference has also been made of the pendency of Writ Petition No. 400(S/B) of 2005. It is also pointed out in the judgment that since there is no interim stay granted by the Hon'ble High Court, as such, the O.A. was allowed subject to final outcome of the writ petition No. 400(S/B) of 2005.

4. 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.

5. 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 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**,

“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) /

In 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.

6. 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."

7. 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."

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."

8. 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

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.

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.”

9. **Inder Chand 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. In Lily Thomas Vs. Union of India Hon'ble 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.”

10. Considering the facts of the case and law laid down by the parties, We 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.

J. Chandra
(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-

*oR
Jayati Chandra
Received 07-7-14
Bhawan
16-7-14*