

By Circulation

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

Review Application No. 54 of 2014

In re.

Original Application No. 198 of 2010

This the 17th day of December, 2014

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

Mukesh Chandra Srivastava & Others.

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Review Applicants

By Advocate: Sri Alok Kumar Tripathi.

Versus.

Union of India & Others.

.....

Respondents

By Advocate:

O R D E R

By Ms. Jayati Chandra, Member-A

This Review Application has been filed by the applicants in the O.A. under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of the judgment and order dated 25.9.2014 passed in O.A. no. 198 of 2010.

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 applicants was dismissed vide judgment and order under review. The operative portion of the order under review is as under:

"In view of aforesaid discussion, the O.A. has no merit and is liable to be dismissed and is accordingly dismissed. No costs".

3. The main grounds for review of the order are as follows:-

(a) Because the Hon'ble Tribunal dismissed the aforesaid O.A. on technical grounds and the law of equity has been ignored.

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- (b) Because the O.M. dated 4.5.2006 being a matter of procedure would be applicable with retrospective effect, therefore, all pending cases at the times of proclamation of O.M. dated 4.5.2006 will be given benefit of this O.M.
- (c) Because the Hon'ble Tribunal failed to consider the gist of Apprentices Act, 1961, which states clearly that the person trained earlier will get preference over apprentices trained later.
- (d) Because Hon'ble Tribunal could not consider the fact that O.M. dated 4.5.2006 was passed by the respondent authority to solve the dispute pertaining to the left out apprentices, who were not adjusted in previous recruits and now in 2004, they were over aged.
- (e) Because the Hon'ble Tribunal failed to consider the pleas taken by the applicants that after 2004 till 2007 there was no other recruitment, so the O.M. dated 4.5.2006, if not applicable upon pending cases will amount to futile exercise.
- (f) Because it is settled proposition of law that in reviewing its own order, every court inheres plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

4. The grounds so raised by the applicants in their Review Application have already been raised in the O.A. and the same has also been dealt with in detail while passing the order under review. It is noteworthy that the order of the Tribunal was passed after hearing the both sides. The O.A. has been dismissed 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 record and not on any other ground. Any error apparent on the face of record must be such an error which must

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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 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

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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 the Review Application and the same is dismissed under circulation.

J.Chandra
 (Ms. Jayati Chandra)
 Member -A

Girish/-

Navneet Kumar
 Member-J

~~o R Jander~~
 Copy
 dated 17-12-14
 Navneet
 19-12-14