

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00057/2014 in O. A. No.55/2009

This the 7 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. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Director, Postal Services (HQ), Lucknow Region, Lucknow.
4. The Sr. Superintendent of Post Office, Barabanki Division, Barabanki.

Applicant

By Advocate: Sri Amar Nath Singh Baghel

Versus

Ram Milan aged about 35 years Ex P.A., Munshiganj, Barabanki Division, resident of village- Teliyani, District- Barabanki..

Respondents

ORDER (Under Circulation)

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

The present Review is preferred by the applicant under Section 22 (3)(f) of the A.T. Act, 1985 for reviewing of order dated 17.9.2014 passed in O.A. No. 55/2009. Along with review application, the applicant has also filed application for condonation of delay for condoning the delay. While deciding the O.A., the Tribunal after considering the material available on record observed that entire enquiry was not conducted in a fair manner, as such the impugned orders are quashed and the O.A. was allowed and the applicant was allowed to be reinstated forthwith. It is also observed by the Tribunal that since the applicant has not worked from 30.5.2006, as such he will not be entitled to any back wages. The review applicant while preferring the present review application has categorically indicated that the applicant was involved in a case of mis-appropriation of Rs. 500/- in respect of R.D. Account No. 52453. The said account belongs to one Smt. Rukhsana while deciding the O.A., it is observed that

during the course of enquiry, the enquiry officer mentioned five PWs but those PWs does not show the name of Smt. Rukhsana whose account number is mentioned in the second article of charge. Not only this, one independent witness namely Sri Om Prakash Gupta is also not mentioned in whose presence lock of the Post office was broken by Sri J.B. Durgapal. It is also to be indicated that enquiry officer has categorically indicated in his enquiry report that Smt. Rukhsana has not attended the enquiry proceedings even then, he came to the conclusion that both the article of charges stand proved. It is a settled proposition that departmental enquiry is to be conducted in a fair manner and not cross examination of the complainant, it could not be treated as a fair departmental enquiry. As such, while considering all material available on record, the Tribunal allowed the O.A.

2. The facts and grounds which are mentioned in the present Review Application has already been adjudicated by the Tribunal in the O.A., and by means of the present Review Application, the applicant wants to re-open the present O.A., which is not permissible.

3. The said review application is preferred by the applicant on 3.11.2014 whereas copy of the judgment was received by the counsel for review applicant on 22.9.2014. It is also clear that the O.A. was decided on 17.9.2014 and copy of the order was obtained by the respondents on 22.9.2014 whereas the review was filed on 3.11.2014 as such, same has been filed beyond 30 days from the date of receipt of certified copy of order sought to be reviewed as prescribed under Rule 17(1) of the CAT (Procedure) Rules, 1987 which is as under :-

“Rule 17(1):- 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.”

4. 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.”

5. The significant paragraphs of the above case law are extracted herein below:-

“11. Even assuming that the Limitation Act is not expressly excluded by the Administrative Tribunals Act or the Rules made thereunder, we have to see whether the scheme of the special law i.e. in this case Administrative Tribunals Act/Rules and the nature of remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern all the matters provided by it. If on an examination of the relevant provisions, it is found that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act and the Rules made thereunder. In our view, even in case the Act/ Rules do not exclude the provisions of

Section 4 to 22 of Limitation Act by an express reference, it would nonetheless has to be examined whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the Act/ Rules exclude their operations. The provisions of Section 3 of the Limitation Act envisage that a suit instituted appeal preferred and application made after the prescribed period shall be dismissed. Whereas Rule 19 of the Rules which gives an pre-emptory command that no application for review shall be entertained unless it is filed within thirty days from the date of the date is of which the review is sought.

12. Even otherwise the provisions of the Limitation Act which unless expressly excluded would be attracted can be made applicable to the nature of the proceedings under the Act/Rules, but the same is not what Section 29(2) of the Act says because it provides that Section 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. If none of them are excluded all of them are applicable whether those sections are applicable or not is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. Section 6 of the Limitation Act, which provides for the extension of the period of limitation till after the disability in the case of a person who is either minor or insane or an idiot, is inapplicable to the proceedings under the Act/ Rules. Similarly, section 7 to 24 are in terms of inapplicable to the proceedings under the Act, particularly in respect of filing of applications and the procedure to be followed under the Act/Rules. The applicability of those provisions has, therefore, to be judged not from the terms of Limitation Act but by the provisions of the Administrative Tribunals Act, 1985 and the Rules made thereunder relating to the filing of original applications and review applications and their disposal to ascertain whether it is a complete code in itself which does not admit of the application of any

of the provisions of the Limitation Act mentioned in Section 29(2) of the Act.

13. *Rule 19 is couched in negative form and disables the person from seeking review under Section 22(e)(f) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay under Section 21 of the Act is applicable only to the applications filed under Section 19, but the same cannot be made applicable to the review sought under Section 22(3)(f) . Sub Section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Govt. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the premise that Limitation Act is made applicable in view of sub-section (2) of Section 29 of the Limitation Act.*

14. *In the view we have taken, we answer the reference holding that the Administrative Tribunal Act and the Rules made thereunder are impliedly inferred 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.”*

6. Thus, the right of review is available if such an application is filed within the period of limitation. 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. As regards the merit of the case is concerned, 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 **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."

10. The Hon'ble Apex Court in the case of **Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs.** Reported in (2009) 14 SCC 663 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 view of the above, this Tribunal finds itself handicapped in condoning the delay and entertaining the review application on merit as well. It is therefore, rejected. No order as to costs.

J. Chandra

(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)