

By Circulation

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

Review Application No. 06 of 2015

In re.

Original Application No. 483 of 2009

This the 19th day of March, 2015

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

Union of India & Others Review Applicants

By Advocate: Sri K.K. Shukla.

Versus.

Agan Ram Patel Respondents

By Advocate:

O R D E R

By Ms. Jayati Chandra, Member-A

This Review Application has been filed by the Review applicants (respondents in the O.A). under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of the judgment and order dated 26.8.12014 passed in O.A. no. 483 of 2009.

2. The Review Application is filed alongwith an application for listing of this case for hearing without giving any concrete reason why the review applicants feel the same cannot be decided by circulation as provided under Rule 17 of CAT (Procedure) Rules, 1987. Hence, the same is decided by circulation. The Review Application has been filed alongwith a prayer for condonation of delay. Under Rule 17 (i) of CAT (Procedure) Rules, 1987 no application for review will be entertained unless it is filed within 30 days for the date of receipt of copy of order sought to be reviewed. It is seen from the copy of the order that the date of preparation of the copy was 28.8.2014 but the same was picked up by the review applicant only on 4.9.2014. The review application is filed on 4.2.2015 i.e. after a delay of four months

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which is explained as due to (a) "several channel of the postal department has been decided that concept position has not been brought out before this Hon'ble Tribunal....." (b) due to winter vacation of the Tribunal inasmuch as required documents have been collected by the undersigned etc etc. and (c) due to personal grounds. These reasons appear to be rather flimsy as all government departments require communication through various channel. The A.T. Act was enacted in order to being speedy relief to applicants and therefore a limitation clause was brought in both in matter of filing an O.A. and a review application. The winter vacation of the Tribunal (of only the bench and not the office) was in the last week of December, 2014. Thus, the only plausible reason is "personal" ground of the learned counsel. That is normally not alone to explain the delay. Therefore, the Review Application is liable to be rejected on the ground of limitation.

3. The review applicants has sought review of the order on the ground that in passing of order dated 26.8.2014, the Tribunal has failed to appreciate the correct facts of the case which are the sanction of PMG, U.P. Circle, Lucknow was conveyed for creation of three posts of Technician, 03 posts of Wireman, four posts of unskilled Labour and one post of C.P. Coolie in Pratapgarh Postal Division as per memo dated 19.6.1979. Sultanpur Division was not bifurcated from Pratapgarh at that time. After bifurcation of Sultanpur Division, there being no such staff available in that Division, the Director, Postal Services, Allahabad had ordered diversion of two posts of Technician, one post of Wireman and two posts of Unskilled Labour out of the above sanctioned posts from Pratapgarh Division to Sultanpur Division vide memo dated 14.4.1986. In compliance of order dated 24.9.1985, Sri Angan Ram Patel (respondent) was appointed to the post of Wireman on purely temporary and adhoc basis vide letter dated 15.4.1986 and the respondent joined his duties on 16.4.1986. Since the post of Assistant Wireman was not sanctioned by Circle office, Lucknow, Sri Angan Ram Patel recruited against the post with the designation of Assistant Wireman and he was regularized vide letter dated 10.4.1992. As one post of Technician was lying vacant, so Sri Angan Ram Patel was ordered to officiate as Technician (Electric) purely on temporary and adhoc basis with

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understanding that arrangement will not confer any right for his regular absorption in the cadre in which he had been promoted to officiate and can be terminated at any time without assigning any reason vide letter dated 15.12.1995. Sri Angan Ram Patel assumed the charge of Technician on 15.12.1995 and subsequently he was confirmed vide order dated 17.3.1999 w.e.f. 15.12.1995. During the course of inspection of Pratapgarh HO in 2009 by audit party, a recovery of over payment of Rs. 4,39,057/- from the pay of Sri Angan Ram Patel was imposed and recovery is being made accordingly by Sr. Post Master, Pratapgarh. The applicant, thereafter, filed O.A. no. 483/09 before this Tribunal against recovery. The said O.A. was disposed of vide order dated 26.8.2014, which is under review. There are several lacunae in the original application under reply and question of law being departmental remedy have not been exhausted.

4. We have gone through the judgment and order under review and have also looked into the grounds taken for review. The grounds so raised by the applicant in his 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. 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 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.

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5. 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 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."

6. 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

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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."

7. 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/-

VR. Kapoor

(Navneet Kumar)
Member -J

*O.R
Copy of order
Dated 19-3-15
for perusal
20-3-2015*