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CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Review Application No. 29 of 2015
In re.
Original Application No. 156 of 2011

This the 4th day of September, 2015

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

Union of India & Others

..... Review Applicants

By Advocate: Sri Raghvendra Mihsra.

Versus.

Kamal Kishore ..... Respondent
By Advocate:

O R D E R

By Ms. Jayati Chandra, Member-A

This Review Application has been filed by the Review applicants under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of the judgment and order dated 23.4.2015 passed in O.A. no. 156 of 2011.

2. The Review Application is filed on 13.8.2015 alongwith an application for condonation of delay in filing the Review Application in which the Review Applicants have given full explanation for day-to-day movement of the file at various levels in the office of review applicants before decision to file Review Application and subsequent filing of the same could be carried out. In view of the explanation given, the delay in filing the Review Application is condoned.

3. By order dated 23.4.2015 passed in O.A. no. 156 of 2011, the following orders were passed:-

> *"In view of the aforesaid discussions, the O.A. succeeds. The respondents are directed to issue appointment letter in favour of the applicant, if he is otherwise eligible and there is no other procedural impediment. The above exercise shall be*

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completed within a period of four months from the date of receipt of copy of this order. No costs. "

4. The present Review Application has been filed on the sole ground that DRTC Rules, 2000 as amended vide SRO no. 147 dated 26th June, 2002 provides with recruitment to the post of STA that candidate possessing higher qualification viz. M.Sc, Ph.D, B.Tech, BE degrees etc. shall not be considered for recruitment. This ground had already been raised by the review applicants in the O.A. and the same have also been considered and 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.

5. In the case of **Parsion 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

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remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

10. Considered in the light of this settled position we fine 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 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

V.K. Agrawal

(Navneet Kumar)
Member-J

Girish/-