

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

Review Application No. 32 of 2015

In re.

Original Application No. 395 of 2010

This the 05 day of October, 2015

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

Jhagroo Prasad Applicant

By Advocate: Sri R.S. Gupta.

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 Review applicant under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of the judgment and order dated 26.11.2014 passed in O.A. no. 395 of 2010.

2. The Review Application is filed on 26.8.2015 alongwith an application for condonation of delay in filing the Review Application in which the Review Applicant has taken only a ground that since the applicant and his wife both became seriously ill from attack of paralysis, hence the Review Application could not be filed within the time. Taking the lenient view, delay in filing Review Application is condoned.

3. By order dated 26.11.2014 passed in O.A. no. 395 of 2010, the following orders were passed:-

"In this case, the applicant has failed to produce copy of any enabling rule/order/memorandum, which would help us to decide the case in his favour. The burden of proof is always upon the applicant. The applicant has failed to prove that his claim for officiating on higher level is justified on the ground of relevant rules. Therefore, the O.A. deserves to be dismissed and is accordingly dismissed. No order as to costs."

4. The present Review Application has been filed on the grounds that the Tribunal has not considered its own judgment

and order in O.A. no. 7/2005 whereby the similar O.A. was allowed and directed the respondent to pay salary difference of higher pay in HSG cadre for the post of SPM w.e.f. 16.1.2003 to 31.1.2003; that the Tribunal has not considered the grounds for equal pay for equal work as per the ratio in case of Dhirendra Chamoli & Another Vs. State of U.P. & Others; that Evidence Act is not applicable in Tribunal so the observations in para 10 and 11 being totally wrong; that the Tribunal has categorically laid down in case of Dinesh Prasad & Others Vs. Union of India (RA no. 28 of 2014) that it is the duty of the Court to rectify and recall its order as and when it is brought to the notice and took other grounds. The aforesaid grounds had already been raised by the review applicant 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 **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 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/-

Navneet Kumar
(Navneet Kumar)
Member-J

OK
Copy of order
Dated 5-10-18
Prod/Recd
06-10-18