

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Review Petition No. 18 of 2004

(Arising out of O.A. No. 382 of 02)

DATE : 24.02.2004

Surya Prakash Pandey, aged about 44 years, S/o Shri
Ram Tirath Pandey, EDDA, Mazruddinpur, Faizabad.

... Applicant.

Vs.

Union of India and others

....Respondents.

O R D E R (Under Circulation)

By Shyama Dogra, M(J):- This Review Petition has come
before me under circulation for review of the order
dated 15.12.2003 passed in OA 382 of 2002 by Lucknow
Bench (Division Bench) of the Tribunal.

2. The applicant has also filed one MA bearing
No. 224 of 2004 for condonation of delay in filing the
Review Petition due to his serious illness. In view of
the submissions made in the said MA, the delay in filing
Review is hereby condoned, and the MA is disposed of
accordingly.

3. The applicant has sought review /modification
of the order dated 15.12.2003 on the ground that
since the pleadings were complete in the matter, and
the parties have exchanged their counter reply,
therefore, the case should not have been disposed of
without going into the merit of the case on the ground
that the applicant has not exhausted / alternate
remedy by not preferring the appeal before the appellate
authority.

4. In support of this contention, the applica
has placed on record various decisions of the Hon'ble

Shyama

Apex Court , viz. (2002 (20) LCD 136) Jeet Bahadur vs. Zonal Manager (North) F.C.I. and ers , (2002 (20) LCD 145) Anantha Ram v. Additional Civil Judge, Mirzapur and ers, 2002 (2) LCD 46) Pradeep Kumar Singh vs. U.P. State Sugar Corporation

5. The applicant has also taken a plea that he has not been heard on this point of availability of alternate remedy and without giving an opportunity of filing supplementary rejoinder.

6. I have gone through the contents of the Review Petition, and the order passed by the Court. So far as plea of the applicant with regard to not affording opportunity of being heard is concerned, the same is not tenable as the learned counsel for the applicant was also heard at length on all the points. Otherwise also, Section 20 of the A.T. Act, 1985 is very clear on this issue of exhausting of remedies available under the service Rules.

7. After perusal of the contents of the Review Petition and the order impugned, I find no reason to interfere in the matter to modify the said order on the following grounds;

(i) The scope of review is very limited, as the court cannot modify its earlier order by substituting its view, as the said provisions are only available for correction of mistake if the same is found to be apparent on the face of the record.

(ii) In review, the Tribunal/Court cannot examine the matter as sitting in appeal, as has been held by the Hon'ble Apex Court in a decision cited in AIR 2000 SC 1650 (Lily Thomas vs. U.O.I.), AIR 1995 SC 453 (Smt. Meera Bhanja vs. Smt. Nirmala Choudhary para 8) and AIR 2002 SC 2537 (Subhash vs.

Shyams

State of Maharashtra , para 3 & 4).

8. So far as decisions referred to by the applicant are concerned, undoubtedly, the alternate or statutory remedy does not ~~bar~~ the person aggrieved to straightway knock the door of the Court for redressal of his grievance, but where certain disputed question of facts are involved, the Court certainly can refer the matter to the higher authority to adjudicate upon the matter after following due process of law, while giving his findings on the said question of facts. Therefore, the above referred decisions relied upon by the applicant ~~can~~ be distinguished on this ground that in the present case , some disputed question of facts were left unanswered , and were not supported with relevant documents, and the same were required to be adjudicated upon by the authority concerned, and the Court has given clear findings on this aspect of the matter.

9. In view of the over all analysis of the matter as above, I find no patent error in the order, and the Review Petition being found to be devoid of merit is rejected in circulation, with direction to the concerned registry to send the file with this order to the Hon'ble Shri S. Jha, Member (A), Principal Bench for his opinion.

Shyama Dugra
(SHYAMA DUGRA) M(J) 24.02.04

Hon'ble Shri Sarveshwar Jha, M(A).

I agree
Sarveshwar Jha
29.3.2004