

Central Administrative Tribunal Lucknow Bench Lucknow

Review Application No. 19/2007
In O.A. No. 193/2006

and

Review Application No. 20/2007
In O.A. No. 308/2006.

This the 18th day of March, 2009.

Hon'ble Mr. M. Kanthaiah, Member (Judicial)
Hon'ble Dr. A. K. Mishra, Member (Administrative)

RA No. 19/2007 in O.A. 193/2006

1. Anindya Chaudhury, aged about 41 years, son of Dr. B.L. Chaudhari, resident of C-852, Sector-C, Mahangar, Lucknow. (Not pressed his claim)
2. Mrs. Archana Chaudhury, aged about 41 years, Daughter of K.S. Chaudhari, resident of 529-G, Kamla Nehru Nagar, Ring Road, Lucknow.
3. Mrs. Bharti Ehsan, aged about 43 years, Daughter of Late R.R. Shukla, resident of 3/42, Bahar-B, Sahara Estate, Jankipuram, Lucknow.
4. R.K. Diwan, aged about 54 years, son of Late Sri K.L. Diwan, resident of House, No. 6, Sector-L, L.D.A. Colony, Kanpur Road, Lucknow Road, Lucknow.
5. Shiv Charan Dhaundyal, aged about 59 years, son of Late Sri D. P. Dhaundyal, resident of F-7, Income Tax Colony, Wazir Hasan Road, Lucknow.
6. Ramji Singh, aged about 55 years, son of Late Sri Radha Krishna Singh, resident of G-2, Income Tax Colony, Wazir Hasan Road, Lucknow.

Applicants/Reviewist
(Private Respondents in O.A.)

By Advocate Sri Raj Singh.

Versus

1. Rajesh Mishra, aged about 47 years, son of Late Sri Shyam Narain Mishra, resident of 3, Ram Bhawan, Vidhan Sabha Marg, Lucknow. (Applicant in O.A.)
2. Union of India through Secretary in the Ministry of Finance, New Delhi.
3. Central Board of Direct Taxes (C.B.D.T.) New Delhi through its Chairman.
4. Chief Commissioner of Income Tax, Ashok Marg, Lucknow.

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Respondents/Official Respondents in O.A..)

By Advocate: Sri K.K. Shukla
Sri Prashant Kumar
Sri A. Moin for Private respondents

R.A.No. 20/2007 in O.A.No. 308/2006

1. Ramji Singh, aged about 55 years, son of Late Sri Radha Krishna Singh, resident of G-2, Income Tax Colony, Wazir Hasan Road, Lucknow.
2. R.K. Diwan, aged about 54 years, son of Late Sri K.L. Diwan, resident of House, No. 6, Sector-L, L.D.A. Colony, Kanpur Road, Lucknow Road, Lucknow.
3. Shiv Charan Dhaundyal, aged about 59 years, son of Late Sri D. P. Dhaundyal, resident of F-7, Income Tax Colony, Wazir Hasan Road, Lucknow.
4. R. K. Mukherji, aged about 60 years, son of Late Sri Manik Chand Mukherji, resident of 1/862, Vinay Khand, Gomti Nagar, Lucknow.

**Applicants/Reviewist
(Private respondents in O.A.)**

By Advocate : Sri Raj Singh

Versus

1. Uma Kant Mishra, aged about 47 years, son of Sri Balram Prasad, resident of 555 Kha, Bhola Khera, Alambagh, Lucknow.
2. Neeraj Srivastava, aged about 41 years, son of Sri Vidya Nath singh, R/o 31, Vishnupuri, Church Road, Aliganj, Lucknow.
3. Amit Gupta, aged about 37 years, son of Sri Om Prakash Gupta, r/o 7/217, Vikas Nagar, Lucknow.
4. Mirza Farhan Beg, aged about 35 years, son of late Mirza Jafar Beg, r/o 155/129 Ka, Hata suleman Kadar, Molviganj, Lucknow.
5. Prem Nath Gupta, aged about 57 years, son of Sri Shambhoo Nath Gupta, R/o 472/8 Ka, Deen Dayal Nagar, Khadra, Sitapur Road, Lucknow.
6. Akhilesh Kumar Nigam, aged about 35 years, son of Late Sri Hanuman Prasad Nigam, R/o F-20, Income Tax Colony, Wazir Hasan Road, Lucknow.
7. Manoj Kumar Srivastava, aged about 46 years, son of Late Raghuvir Prasad Srivastava, R/o 828/196, Sarai Thok, West, Hardoi.

8. Sanjay Kumar Vidyarthi, aged about 38 years, son of Sri Ravindra Kumar Vidyarthi, R/o 64, I.I.M. Crossing, Bhitauli chungi, Sitapur Road, Lucknow.
9. Smt. Rajni Sharga, aged about 52 years, Daughterd of Sri Prem Nath Raina, R/o 394/20, Manohar Niwas, Kashmiri Mohalla, Lucknow.

(Respondents/ Applicants No. 1 to 9 in main O.A.)

10. Union of India through Secretary in the Ministry of Finance, New Delhi.
11. Central Board of Direct Taxes (C.B.D.T.) New Delhi through its Chairman.
12. Chief Commissioner of Income Tax, Ashok Marg, Lucknow.

Respondents(Official Respondents in O.A.)

**By Advocate: Sri Prashant Kumar/ Sri K.K. Shukla
Sri A. Moin for Private respondents.**

ORDER

By Hon'ble Mr. M. Kanthaiah, Member (J)

Both these review applications have been filed against the judgment and order dated 8.6.2007 in main O.A. under Rule 17 of CAT (Procedure) Rules, 1987.

2. O.A. No. 193/2006 was filed by the applicant Sri Rajesh Mishra against the official respondents directing the respondents not to disturb the regular promotion of the applicant on the post of Office Superintendent made vide order dated 28.7.2005 and also directing the respondents not to hold the departmental promotion committee for considering the promotion of the applicant on the post of Office Superintendent pursuant to the letter dated 12.4.2006 of the Chief Commissioner of Income Tax, Lucknow and the same was allowed on 8.6.2007.

3. It is also not in dispute that the official respondents have preferred the writ petition against the judgment and order dated 8.6.2007 and the same is pending on the file of the Hon'ble High Court, Lucknow Bench. One of the applicants herein who has been shown as respondent No. 5 in the main O.A. has also filed writ petition No.10/2008 on the file of the Hon'ble High Court against the judgment and order of the Tribunal and the same is also pending.

4. Sri Uma Kant Mishra and 8 others have filed O.A. No. 308/2006 against the same official respondents not to disturb the regular promotion of the applicant on the post of Office Superintendent made vide order dated 28.7.2005 and also directing the respondents not to hold the DPC for considering the promotion of the applicant on the post of Office Superintendent pursuant to the letter dated 12.4.2006 of the Chief Commissioner of Income Tax, Lucknow and the same was allowed with consequential relief on 8.6.2007.

5. During the pendency of these O.As, private parties No.1 to 4 have filed M.P. No. 1909/2006 in O.A.No. 308/2006 and private parties No. 1 to 6 in M.P. No. 999/2006 in O.A.No. 193/2006 to implead them as private respondents in respective OAs and the said applications were allowed on 4.7.2006. But while carrying out the amendment, the learned counsel for the applicant added CAT, Lucknow Bench, Lucknow through its Registrar as private respondent in both the OAs and also omitted Sri Ramji Singh to be incorporated as private respondent. Both side advocates including the private respondents did not notice the said mistake though he was present till the disposal and participated by filing comments and advanced arguments on behalf of the private respondents. While preparing the order dated 8.6.007, the same mistake has been carried out in the cause title of the judgment in respect of private parties. Subsequently, when the applicant filed C.C.P. No. 55/2007 in OA. No. 193/2006, this Tribunal suo-moto ordered the applicant to carry out the amendment as per orders in M.A.No. 999/2006 and accordingly learned counsel for the applicant has carried out the same in O.A and consequently the same has been ordered for correction in the orders of the Tribunal dated 8.6.2007. But in respect of such mistake occurred in O.A. No. 308/2006, no such order has been passed by the Tribunal in respect of correction of the names of the parties as per M.P. No. 1909/2006 in main O.A. This is all on account of typographical mistake and also mistake committed by the learned counsel for the applicant while carrying out the amendment in O.A. incorporating the names of the private parties, which has been brought to the notice of the Tribunal only after pronouncement of the orders in OAs.

6. Private respondents, who were impleaded at their instance in O.A. have filed this application to review the judgment and order of this Tribunal dated 8.6.2007 on the following grounds:-

- i) The applicant has not incorporated the amendment as per the orders of the Tribunal, due to which some of the parties have not been incorporated and further unnecessary parties have been incorporated;
- ii) The Tribunal failed to appreciate the pleadings of the private respondents and also arguments advanced in support of their case.
- iii) There was no proper appreciation of facts of the case, not considered the arguments and also interpretation of circulars of the CBDT and thus the findings of this Tribunal order dated 8.6.2007 were faulted;
- iv) The applicant has also extracted the facts in O.A. and findings of the Tribunal on such claim of the applicant and also stating that there was no proper appreciation in findings on such aspects.

7. The applicants in main O.A. filed their counter reply and resisted the review applications on the ground that the petitioners are seeking recall of the judgment on the basis of merits, stating that this Tribunal has failed to appreciate the facts and documents properly, which is not within the purview of the review application. He also admitted that there was some mistake committed on the part of the counsel, while incorporating the names of private respondents in the cause title of O.A. which resulted in carrying out the same mistake in the cause title of the judgment and order of the Tribunal dated 8.6.2007.

8. From the grounds, which the applicant has raised in the review application, it requires detailed discussion and reappraised of earlier discussion and finding of the Tribunal which falls within the purview of appeal but not within the scope of review as provided under order 47 Rule 1 of CPC. The applicant is justified in seeking review of the order of the Tribunal, if there is any mistake or error apparent on the face of the record or on the ground of discovery of new and important matter or evidence which was not within the knowledge of the applicant in spite of his due diligence. But no such circumstances are prevailing in the instant case except to in respect of improper carrying out of amendment of

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cause title by the applicant, made after allowing impleadment application of private respondents.

9. In respect of such mistake, this Tribunal had already taken note in CCP No. 55/2007 and also suo moto ordered for correction in main O.A. 193/2006 and accordingly the applicant carried out the same and such correction is required in the order. But such mistake is still available in another file in O.A. 308/2006 and if Writ Petition is not filed and pending against such order, the same requires immediate rectification in accordance with impleadment application, enabling the Tribunal to carry out the same in the order of this Tribunal by granting two weeks time to the applicant for carrying out amendment in cause title and with this observation R.A. No. 20/2007 is disposed of and other R.A. No. 19/2007 is dismissed with a finding that here are no merits in the claim of the applicants for allowing such claim for review. *There are some*

Appld 18/03/09
(Dr. A. K. Mishra)
Member (A)

Concurred
(M. Kanthaiah)
Member (J)

HLS/-

(8-03-2009)