

Central Administrative Tribunal Lucknow Bench Lucknow.

Review Application No. 02 of 2010
IN

Original Application No.297 /2009(D)

This, the 2nd day of February, 2010

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A. K. Mishra, Member (A)

Chandrika Prasad aged about 52 years S/o Late Sri Makhan Lal R/o A Block Ambedkar Nagar Sitapur working as Accountant Sitapur H.P.O.

Applicant

By Advocate Sri R.S. Gupta.

Versus

1. Union of India through Secretary Department of Post Dak Bhawan New Delhi.
2. D.P.S. (HQ) o/o C.P.M.G. U.P. Lucknow.
3. S.P.Os Sitapur.

Respondents

Order (Under Circulation)

By Hon'ble Dr. A. K. Mishra, Member (A)

This Review Application has been filed against the order dated 18.9.2009 passed by this Tribunal in O.A. No.297/2009 with a delay of 3 months and 23 days. An application for condonation of delay has been filed on the ground that it took some time for the applicant to obtain a copy of the office memorandum relating to distribution of work between two Accountants. Delay is condoned.

2. The applicant has filed a copy of the memo relating to distribution of work in the office of Sitapur Post



Office made by the Superintendent on 2.3.1989 to suggest that the task relating to fixation of pay was entrusted to Accountant-I not to him who was working as Accountant-II. The fact remains that the work relating to fixation of pay on account of implementation of the Vth Pay Commission had increased considerably and had to be completed within a time frame. Therefore, this task had been handled both by Accountant-I as well as and the applicant in his capacity as Accountant-II. He does not deny that he had not handled the work of pay fixation. Therefore, this office memorandum about distribution of work is of no help to him.

3. The other argument is that the instructions relating to pay fixation and obtaining under taking from employees about recovery of any excess payment were not known to him. This is not a new plea. It has already been dealt with in our order dated 18.9.2009. The next ground taken by him is that the Drawing and Disbursing officer is responsible for obtaining undertaking and in their office, the Treasurer, or Assistant Treasurer was the Disbursing authority. This ground was not taken by him in the O.A. nor at the time of its hearing. Only such ground as is based on discovery of a new fact which was not known to the applicant at the time of hearing of the application could be a legitimate ground for review. We find that the applicant had taken this ground in the appeal petition filed by him before the appellate authority. It has been discussed at paragraph 4(ii) of the appellate order and rejected.



The relevant extract from the appellate order is reproduced below:

"The plea of the Appellant that he was not Disbursing Officer and declaration from Postman should be obtained by him, is not correct because APM accounts and Accountants function on the behalf of D.D.O. i.e. Head Postmaster. The Appellant was working on the post of Accountant and as per MDW, it was his duty to obtain undertaking from Postman. Hence, the Appellant cannot be exempted from the Charge that he was not the Disbursing Officer. Moreover, it has been clearly discussed in the Punishment Order that the Appellant had taken action on all points related to the Government Order except taking undertaking from the concerned official. He has not put forth any argument against this finding of the Disciplinary Authority".

The fact that this ground was not taken in the O.A. nor argued at the time of hearing goes to show that the applicant had accepted the finding of the appellate authority on the plea raised by him earlier in his appeal petition. Admittedly O.M. dated 14.10.1997 was known to the applicant at the time of filing the O.A. and it is not a new discovery. The other grounds taken in this application relate to appreciation of either the law on the subject or the facts of the case.

4. The settled law is that the scope of review is limited in nature. It cannot be treated as an appeal for reassessment of law and facts on the subject. The phrase 'error apparent on the face of record' has been clarified by the Supreme Court in the case of State of West Bengal and Others Vs. Kamal Sengupta and another reported at (2008) 8 SCC 612. The relevant portion of this judgment is extracted below:


"Where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered

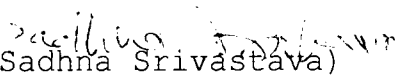


the judgment. Mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. The party seeking review has also to show that such additional matter or evidence was not within the knowledge and even after exercising of due diligence, the same could not be produced before court earlier.

The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and direction thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22 (3) (f) of the Act. To put it differently, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. While exercising the power of review, the court,, tribunal concerned cannot sit in appeal over its judgment/decision."

5. In the circumstances, we do not find any merit in this review application which is accordingly dismissed.,


(Dr. A. K. Mishra)
Member (A)


(Ms. Sadhna Srivastava)
Member (J)

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