

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Review Application No.10/2010 in O.A. No.161/2006

Order Reserved on 8.7.2014

Order Pronounced on 16/7/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Vijay Bahadur Singh Rathore aged about 68 years son of late Harihar Bux Singh resident of Kuwarpur Amarha, P.O. Paharpur (Conelganj), District- Gonda.

Applicant

By Advocate: Sri Surendran P

Versus

1. Union of India through the Secretary, Ministry of Communication and I.T. , Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Gonda Division, Gonda
3. Senior Superintendent of Post Offices, Gorakhpur Division, Gorakhpur.

Respondents

By Advocate : Sri S.P.Singh

ORDER

By Hon'ble Mr.Navneet Kumar, Member (J)

The present Review Application is preferred by the applicant u/s 22(3)(f) of AT Act, 1985 for reviewing the order dated 11.2.2009 passed in O.A. No. 161 of 2006, passed by the Tribunal.

2. The O.A. was finally heard and decided by the Tribunal vide order dated 11th February, 2009 wherein the Tribunal observed that scope of judicial review to reassess the evidence is not within the scope of the Tribunal and no violation of natural justice is seen in the disciplinary proceedings. As such, O.A. was dismissed.

3. The applicant prefers the review application and pointed out that number of other employees who were involved in the case were issued minor penalty charge sheet under Rule 16 of CCS (CCA) Rules and there was only a loss of Rs. 1,29,000/- which was required to be recovered from all the employees who were involved in the incident and the applicant being innocent, was charge sheeted under Rule 14 of

CCS (CCA) Rules. Thus, the same is violative of Article 14 and 16 of the Constitution of India. Learned counsel for applicant has also taken reliance of Rule 15 (2) of CCS (CCA) Rules, 1965 and has pointed out that in the entire disciplinary proceedings the applicant was not given proper opportunity of hearing. Apart from this, the applicant has also taken a ground that punishment awarded to the applicant does not commensurate with the misconduct and the authority who has issued the charge sheet was not competent to issue the same.

4. Learned counsel appearing on behalf of the respondents filed their reply, it is pointed out by the learned counsel for the respondents that the arguments which has been raised by the applicant during the course of arguments no such ground is mentioned in the review application and it is pointed out that the scope of review is very limited in the disciplinary proceedings and the Tribunal cannot re-write its own judgment by means of review application. Apart from this, learned counsel for respondents has also brought to the notice of the Tribunal about the factual aspects of the case and has also taken a plea that the disciplinary authority after considering representation of the applicant and other available record of the case has held that all the three charges leveled against the applicant were proved on the basis of evidence on record and submitted the case for appropriate action under Rule 9 of CCS (Pension) Rules 1972 as the applicant has already retired from service after attaining the age of superannuation on 31.1.2012. It is also indicated that the advice of UPSC was also obtained and after careful consideration of the advice of the UPSC, the punishment was imposed.

5. Learned counsel for the applicant has filed Rejoinder reply and through rejoinder reply, mostly the averments made in the Review application are reiterated and the contents of the counter reply are denied.

6. Heard the learned counsel for the parties and perused the record.

7. The O.A. was decided by means of order dated 11.2.2009 and the said order was taken to the Hon'ble High Court and during the course of arguments, the applicant sought liberty from the Hon'ble High Court to withdraw the writ petition and to approach the Tribunal by way of filing the review application. Accordingly, the Hon'ble High Court granted the permission to withdraw the writ petition and directed the applicant to file the review application, as such the present review application is filed. While deciding the O.A., the Tribunal discussed the Article of charges and has also discussed about the denial of the charges made by the applicant. The Tribunal has also considered that the matter was referred to the UPSC for their advice and the UPSC after careful consideration of the facts, evidence and enquiry report and observed that charges were proved against the charged official and these constituted grave misconduct. As such, the impugned punishment order was passed. Not only this, the Tribunal has also dealt with the grounds challenge of the order and finally came to the conclusion that it is not a case that the applicant has not been given opportunity to defend his case whereas full opportunity has been given to him at each and every stage of the disciplinary proceedings and on the basis of material available on record, the disciplinary authority came to the conclusion that the fictitious accounts were opened at the behest of the applicant who had a role to play in subsequent fraudulent deposits/withdrawals. Accordingly, the O.A. was dismissed. Undisputedly, the scope of judicial review in disciplinary proceedings is very limited specially when there is no procedural lapses in conducting the enquiry. As observed by the Hon'ble Apex Court in the case of **B.C. Chaturvedi v. U.O.I. & ors.** **reported in 1995(6) SCC 749** "the scope of judicial review in

disciplinary proceedings the Court are not competent and cannot appreciate the evidence.”

8. Now the question of review which is before this Tribunal at present and it is clear that the scope of review is very limited. As observed by the Hon'ble Apex Court in the case of **Meera Bhanja vs. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170**, that review proceedings cannot be considered by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC and review petition is required to be entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has also been pleased to observe that while deciding the review, the matter cannot be re-apprised and only typographical error apparent on record can be reviewed.

9. The Hon'ble Apex Court in the case of **State of West Bengal and Ors. -vs- Kamal Sengupta and Another reported in 2008 (3) AISLJ 231** laid down eight factors to be kept in mind while deciding the review application which are as under:-

- (1) **The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.**
- (2) **The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.**
- (3) **“that any other sufficient reasons” in order 47 Rule 1 has to be interpreted in the light of other specified grounds.**
- (4) **An error which is not self evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of the record.**
- (5) **An erroneous decision cannot be correct under review.**
- (6) **An order cannot be reviewed on the basis of subsequent decision/ judgment of coordinate/ larger bench or a superior Court.**
- (7) **The adjudication has to be with regard to material which were available at the time of**


initial decision subsequent event/
developments are not error apparent.

(8) Mere discovery of new/ important matter or evidence is not sufficient ground for review. The party also has to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced earlier before the Tribunal.

9. In another case of Parsion Devi and Others Vs. Sumitri Devi and Others reported in (1997) 8 SCC -715, the Hon'ble Apex Court has been pleased to observe 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

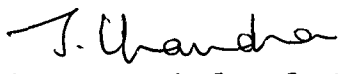



appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

10. **Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs. Reported in (2009) 14 SCC 663**

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Considering the observations of the Hon'ble Apex Court and the pleadings available on record, we do not find any reasons to interfere in the present review application. Accordingly the review application is dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-