

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Review Application No.13/2010
In
Original Application No.322/2008**

**Reserved on 05.02.2014.
Pronounced on 1st April 2014..**

**Hon'ble Ms. Jayati Chandra, Member (A)
Hon'ble Mr. M. Nagarajan, Member (J)**

Dr. Vishnu Dayal Agrawal, aged about 67 years, son of Late Sri G.P. Agrawal, resident of A-14, Malviya Nagar, Aish Bagh, Lucknow [lastly working in Geological Survey of India, Northern Region, Lucknow].

-Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through, Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.
2. Secretary, Ministry of Mines, Department of Mines, Shastri Bhawan, New Delhi.
3. Director General, Geological Survey of India, 4, Chaurangi Lane, Kolkata-16.
4. Senior Deputy Director General, Geological Survey of India, Northern Region, Aliganj, Lucknow.
5. The Director-Incharge, Geophysics Division Geological Survey of India, Northern Region, Lucknow.

-Respondents.

By Advocate: Sri Sunil Sharma.

O R D E R

Per Ms. Jayati Chandra, Member (A)

This Review Application has been filed under Rule 17 of Central Administrative Tribunal (Procedure) Rules, 1987 praying for review of the order dated 16.12.2009

J. Chandra

passed in O.A.No.322/2008. The prayer of review is accompanied by a delay condonation application. The delay according to the Review Applicant is marginal and is liable to be condoned for the reasons that the copy of the order was received by the applicant on 18.12.2009. He moved an application for correction of certain typographical errors through M.P.No.101/2010. The topographical errors were corrected by an order dated 20.02.2010 and certified copy of corrected order was received by the applicant on 12.03.2010. Under Rule 17 (i) of CAT (Procedure) Rules, 1987 provides time limit of 30 days from the date of receipt of the copy of the order for filing review petition. The applicant should have filed present Review Application by 11.04.2010, but it was filed on 31.5.2010/1.6.2010 as he suffered from certain illness. He has placed reliance on a Full Bench decision of Hon'ble Calcutta High Court in the case of **Union of India & Others vs. Central Administrative Tribunal & Others 2003 LAB I.C. 174** and Central Administrative Tribunal, Principal Bench in the case of **Nand Lal Nichani Vs. Union of India & Others reported in 1991093 FBJ-Vol.II-85** in which it has been held that the Tribunal has inherent power of condonation of delay.

2. The grounds seeking for review application is that the Tribunal had erred in law in the order dated 16.12.2009 which had placed reliance on an order dated 29.6.2004 passed in O.A.No.145/1999. In the earlier O.A. (O.A.No.145/1999), the present review applicant had challenged the enquiry proceedings against him on the ground that it was initiated by an in-competent authority as also there was bias and malafide on the part of the

J. Chaudhury

inquiry officer. Tribunal in its order dated 29.06.2004 had, without recording expressed finding on these two averments, had dismissed the O.A. Thereafter, the applicant filed Writ Petition No.1179 of 2004 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. All these facts were placed before the Tribunal in O.A.No.322/2008. The Tribunal although quashed the orders dated 26.3.2008 passed by the respondents in the disciplinary proceedings did not record any finding on these grounds holding them to be barred by principle of Res-judicata. Thus while dismissing the application, the Tribunal has ignored law as laid down by the Hon'ble Supreme Court in two cases:-

- (a). ***N. Suresh Nathan & Others Vs. Union of India & Others AIR 2010 SC-2171.***
- (b). ***P.V. Subba Rao Vs. V. Jagannadha Rao AIR 1967 SC 591***, in which it was held that principles of Res-judicata does not apply where the issue were not raised or were not heard and finally decided.

3. Furthermore, the order dated 20.02.2010 did not give any direction with regard to the second relief of seeking payment of emoluments even though the impugned orders were set-aside. Further, in ***S. Nagraj & Others Vs. State of Karnataka 1993 Supp.-4 SCC-594*** it has been held that if a Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which infact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. The question with regard to non-competence of disciplinary authority and malafides and bias of the Enquiry Officer were not dealt-

J. Chandra

with in O.A.No.145/1999 and thereafter, the Tribunal erred in concluding these averments need not to be dealt-with on the principle of res-judicata is an error on the face of record and therefore needs to be rectified through the review mechanism.

4. The respondents have initially objected to the maintainability of the review application on the ground of delay. The applicant has admitted that he moved an application (M.P.No.101/2010) on 25.01.2010, seeking to rectify certain typographical mistakes. He could have very well have moved for reviewing the order in toto. His subsequent plea of illness is not based by any illness certificate. Coming to the merits of the review application, the respondents have stated that the applicant had filed Writ Petition No.1179 of 2004 against the order passed in O.A.No.145/1999. As there was no stay order in the writ petition, there was no error in placing reliance on the same. Coming to the second ground of the order for not passing any observation with regard to the relief claimed, it is submitted that it is settled preposition of law that the relief(s) claimed but not granted by the Court it would mean that the same is rejected and for claiming the same, no review application would lie. By claiming such relief by way of review, the Tribunal is required to sit as an appellate Court on its earlier decision.

5. We have heard the rival submission of the parties and perused the records. Although, it is noted that the applicant had filed M.P.No.101/2010 seeking certain corrections of typographical errors and he could have moved a review application alongwith the application for correction of typographical errors but there is no

I Chander

apparent illegality in choosing not to do. The delay in moving the regular Review Application is of about three months from the date of receipt of certified copy of the corrected order and 4 month from the date of passing of the order. This is not such inordinate period of time where the delay cannot be condoned. Therefore, the delay is condoned.

6. The main ground that appears to have been taken by the Review Applicant is that the order dated 16.12.2009 was passed in O.A.No.322/2008 placing reliance on order dated 29.06.2004 passed in O.A.No.145/1999 which was challenged under Writ Petition No.1179 of 2004. Therefore, by placing reliance on the same and applying of the principle of Res-judicata is an error and is liable to be rectified.

7. It is seen that the Writ Petition was dismissed as having become infructuous by an order dated 26.11.2009. Thereafter the recall application moved by the applicant against such dismissal order was disposed of by an order dated 30.03.2011 in which the only direction was the following:-

"In view of the above, the writ petition has rightly been dismissed as infructuous having lost its efficacy so far as the relief claimed by the petitioner in the present case is concerned.

With regard to the latter decision taken by the Tribunal since the same has not been challenged in the present writ petition, no interference is warranted under Article 226 of the Constitution of India. However, for any grievance, the petitioner may approach the appropriate Forum keeping in view the final order passed by the Tribunal. The Tribunal shall decide the review petition expeditiously.

Application is accordingly disposed of."

J. Umesh

Thus, the order dated 29.06.2004 passed in O.A.No.145/1999 which has held that the disciplinary action was initiated by the competent authority has attained finality.

8. The present review application has been filed against the order passed in O.A.No.322/2008 by which the impugned order has been set aside and the respondents were given liberty to pass fresh order in the disciplinary case as per law. If review application is allowed it will be in the nature of setting back the clock and the orders of O.A.No.145/1999 will become operative.

9. The order under review has been passed after hearing both the parties at length. 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,**

"5. In the matters concerning review the Tribunal is guided by Rule 47(1) of CPC. The parameter of a review application is limited in nature. The Apex Court has laid down the contours of a review application in the State of West Bengal and Ors. Vs KamalSengupta and Another (Supra)/

At para 28 the Hon'ble Apex Court has laid down eight factors to be kept in mind which are as follows:

- (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.**

J. Chaudhary

- (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.

10. In another case of **Parson 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

T. Venkata

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 overstepped 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."

I Chander

11. **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. Review is not appeal in disguised. J In **Lily Thomas Vs. Union of India this Court held SCC P. 251, Para 56)**

“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.”

12. Further, the same view has been held by the Hon'ble Supreme Court 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

J. Chandra

spirit of order XLVII, Rule 1 of CPC as has been held in this judgment of Hon'ble Supreme Court.

13. Considering the facts of the case and law laid down by the Hon'ble Apex Court, we do not find any ground to interfere with the present review petition. Review petition lacks merit and as such it deserves to be dismissed.

14. Therefore, the review application is rejected. However, the applicant would be at liberty to challenge any order which may be passed by the respondents in compliance of the order dated 16.12.2009 before an appropriate forum.

—
(M. Nagarajan)
Member (J)

J. Chandra
(Ms. Jayati Chandra)
Member (A)

amit/-