

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 2.9.2015.

Pronounced on 15.09.2015.

Original Application No.299/2010

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

Hon'ble Ms. Jayati Chandra, Member (A)

Nand Kishore Gupta, aged about 45 years, S/o Sri G.L. Gupta,
R/o Gram Mathuranagar, Tola Sanichari Bazar, Post Anandnagar,
District Maharajganj.

-Applicant.

By Advocate: Sri A. Moin .

Versus.

1. Union of India through General Manager, NER, Gorakhpur.
2. DRM, NER, Ashok Marg, Lucknow.
3. DRM (P), NER, Ashok Marg, Lucknow.

-Respondent.

By Advocate: Sri Rajendra Singh

ORDER

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of
Administrative Tribunals Act, seeking the following relief(s):-

- (a) *to quash the impugned order dated 7.7.2010 passed by the respondent no.3, as contained in Annexure no.A-1 to the O.A. with all consequential benefits.*
- (b) *to direct the respondents to redeploy the applicant on a suitable post of Ticket Collector Grade Rs. 5200-20200/- within a specified time or any other suitable Group 'C' post within a specified time with all consequential benefits.*
- (c) *to pay the cost of this application.*
- (d) *any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."*

2. The facts of the case are that the applicant was appointed on compassionate grounds vide order dated 18.9.1997 on temporary basis with the stipulation that he would pass typing

T Chandra

accepted and the order is reviewed in favour of the review applicant, it would amount to an order which can be passed in writ or appellate jurisdiction only. In view of the law settled by the Apex Court, if the plea or ground taken in the Review Application is accepted and the order is reviewed in favour of the review applicant, it would amount to an order which can be passed in writ or appellate jurisdiction only. 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 spirit of order XLVII, Rule 1 of CPC as has been held in this judgment of Hon'ble Supreme Court.

4. In the case of **K. Ajit Babu Vs. Union of India & Others reported in 1997 (6) SCC 473** while examining the provisions of Section 22(3)(f) of AT Act and Rule 17(1) of CAT (Procedure) Rules, and also order under 47 Rule 1 of CPC, the Hon'ble Supreme Court has held that the right of review is available to the aggrieved person on restricted ground mentioned in order 47 of the CPC if filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a procedure to review is permitted without any limitation, then no decision would be final because the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour has been given cannot monitor the case for all times to come. Therefore, the public policy demands that there should be an end of legal cases. In **2002 SCC (L&S) 756 in the case of K.G. Derasari & others Vs. Union of India & Others** it was observed by Hon'ble Supreme Court that any attempt except to an attempt to correct an apparent error or an attempt not based on any ground setout in order 47, would amount to an abuse of the

T. Chandra

liberty given to the Tribunal under the Act to review its judgment. The Tribunal cannot proceed to reexamine the matter as if it is Original Application before it in the light of ratio given in **Subash Vs. State of Maharashtra & others reported in AIR 2002 SC 2537.**

5. In the case of **Parsion Devi and Others Vs. Sumitri Devi and Others reported in (1997) 8 SCC -715**, the Hon'ble Supreme Court has held 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."

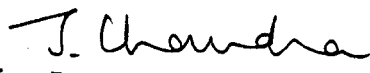
10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed 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."

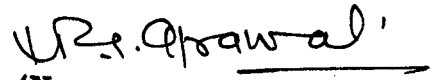
J. Chandra

6. The Review is not an appeal in disguised as held by Hon'ble Supreme Court in the case of J. N.Lily Thomas Vs. Union of India. The relevant portion reads as under:

"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."

7. In view of the above legal position, we do not find any merit in the Review Application and the same is dismissed.


(Ms. Jayati Chandra)
Member -A
Girish/-


(Navneet Kumar)
Member-J

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