

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

Review Application No. 3/12 in Original Application No.235/2010

Review Application No. 4/12 in Original Application No.234/2010

Review Application No. 5/12 in Original Application No.233/2010

Review Application No. 6/12 in Original Application No.236/2010

This the ^{27th} day of April, 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Mr. S.P. Singh, Member (A)

Review Application No. 3/12 in Original Application No.235/2010

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.
4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

Applicants.

By Advocate: Sri Surendran P/Sri Rajendra Singh

Versus

Smt. Rama Bhadauria, a/a 49 years, W/o Sri Tej Singh Bhadauria, R/o 30/4, Gandhi Gram, Kanpur, Presently working as PRT, Kendriya Vidyalaya NTPC, Dibiyapur.

Respondents

By Advocate; Sri V.K.Srivastava

Review Application No. 4/12 in Original Application No.234/2010

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.
4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

Applicants.

By Advocate: Sri Surendran P/Sri Rajendra Singh

Versus

Shri U.K.Dwivedi age about 50 years son of late K.N. Dwivedi resident of 566 B, Safipur ,Harjinder Nagar, Kanpur presently working as PRT, Kendriya Vidyalaya No.1, Chakeri, Kanpur.

Respondents

By Advocate; Sri V.K.Srivastava

Review Application No. 5/12 in Original Application No.233/2010

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.
4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

Applicants.

By Advocate: Sri Surendran P/Sri Rajendra Singh

Versus

Smt. Chitra Patvardhan aged about 53 years, wife of Sri Atul Patvardhan, resident of 120/575, Shivaji Nagar, Kanpur presently working as PRT, Kendriya Vidyalaya No.1, Chakeri, Kanpur.

Respondents

By Advocate: Sri V.K.Srivastava

Review Application No. 6/12 in Original Application No.236/2010

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.
4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

Applicants.

By Advocate: Sri Surendran P/Sri Rajendra Singh

Versus

Smt. Arunima Dubey aged about 51 years wife of Shri S.K. Dubey, resident of 58, Gandhi Gram, Harjinder Nagar, Kanpur, presently working as PRT, Kendriya Vidyalaya No.3, Chakeri, Kanpur.

Respondents

By Advocate: Sri V.K.Srivastava

(Reserved on 26.4.2012)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

These four Review Applications (3/2012, 4/2012, 5/2012 and 6/2012) have been filed under Rule 17(3) of the Central Administrative Tribunal (Procedure) Rules, 1987 read with Section

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22 (3)(f) of the Administrative Tribunal Act, 1985 against the judgment and orders of the coordinate bench of this Tribunal in O.A. No.s 235/2010, 234/2010, 233/2010 and 236/2010 respectively. All the four OAs were decided by a common order dated 12.7.2011 by this Tribunal. Therefore, these review applications have also been clubbed together and are being decided by a common judgment.

2. We have heard the learned counsel for the parties and perused the material on record.

3. The scope of review under the aforesaid provisions lies in a narrow campus. It can be made only when there is error apparent on the face of record or on discovery of any new and important material which even after exercise of due diligence was not available with the applicant. But during the entire course of arguments, no such error apparent on the face of record or any new and important material could be shown which was not available even after exercise of due diligence. Any erroneous decision and a decision which can be characterized as vitiated by 'error apparent' has been distinguished by a bench of **M/s Thungabhadra Industries Ltd.**

Vs. Govt. of Andhra Pradesh reported in AIR 1964 Supreme Court, 1372. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. A patent error can be said to be an error when without any elaborate argument, one could point out that error and say that here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained. The learned counsel for applicants

could not show any such substantial point of law which may stare in the face making out any clear case of error apparent.

4. The decision of above this coordinate bench in the above OAs were challenged by filing writ petitions before the Hon'ble High Court which have been disposed of on 15.12.2011 with a direction that upon filing an application for review, the same shall be disposed of within a month.

5. The perusal of order dated 15.12.2011 shows that only one submission was made on behalf of the petitioners as mentioned in the 3rd paragraph of the order of Hon'ble High Court. It is as under:-

"Learned counsel submitted that from the tenor of the order, it appears that the Tribunal has found fault with amended transfer policy, whereas in the operative portion of the order, it has only given a direction to implement the policy prospectively. Thus, Sri Chaturvedi prays for and is granted liberty to file a review clarification application before the Tribunal".

6. From the above observation, firstly it appears that the Hon'ble High Court has not made any observation of its own. Only the submission made on behalf of the petitioners has been mentioned. Secondly, it appears that on the request of the learned counsel for the petitioners liberty was granted to file a review / clarification application.

7. At this stage, we thoroughly perused our own judgment/ order dated 12.7.2011. We could not find from the tenor of the order that this Tribunal had found any fault with the amended transfer policy as was argued before Hon'ble High Court. On the converse, it has been clearly mentioned in para 5 of our judgment

that the entire emphasis in the pleadings of the applicants was against giving retrospective effect to the amendment, illegally and arbitrarily, though in the opening paragraph of the transfer policy in question, it is clearly mentioned that these transfer guidelines will stand amended with immediate effect. Relevant paragraph 5 of our judgment is extracted hereinbelow:-

"The tone and tenor of the pleadings in all the OAs is that giving retrospective effect to the amendment is illegal and arbitrary and is violative of Article 14 of the Constitution of India as well as against the principle of natural justice. It has been emphasized that amendments can not be made applicable retrospectively.

It was pointed out that for the purpose of calculating the longest stayee at a station, previously the period of less than three months was to be ignored but after the amendment the period of less than three months has been enhanced to less than three years if a teacher returns to same station. In the opening paragraph itself it is mentioned that this transfer guidelines will stand amended with immediate effect. In the entire amended guidelines no where it is mentioned that this amended provision has to be given retrospective effect."

Similarly, in para 10 of our judgment, it has been clearly mentioned that though in all the OAs, the first relief is for quashing / setting aside the amendments made in the transfer guidelines but no case is made out for the same. Moreover, KVS has every power to make suitable amendments in the transfer guidelines. The learned counsel for applicants also fairly conceded on this point. He therefore, confined his arguments only in respect of giving amended guidelines in question a retrospective effect and thereby

effecting the applicants retrospectively in an arbitrary manner. The relevant paragraph 10 is also extracted as under:-

"10. At the out set it may be mentioned that though in all the OAs , the first relief is for quashing/ setting aside the amendments made in the transfer guidelines issued by opposite party No.2 on 12.4.2010 (Annexure No.1) but no case is made out for the same. Otherwise also we are not inclined to interfere in this regard because K.V.S. has every power to make suitable amendments in the transfer guidelines. The learned counsel for the applicants also fairly conceded on this point. He therefore, confined his arguments only in respect of giving amended guidelines in question a retrospective effect and thereby effecting the applicants retrospectively in an arbitrary manner, particularly, when there is no express provision or any such implication in the said amendment. '

Therefore, the aforesaid submissions made on behalf of the KVS and its officers before the Hon'ble High Court was against the record. Be that as it may. On their own request, liberty was given to them to file review/ clarification application, which the official respondents have filed before us.

8. Now, therefore, we proceed to consider the grounds mentioned in this review petitions in the back drop of the above preposition of law laid down in the case of ***M/s Thungabhadra Industries Ltd.(Supra)***. Here another preposition of law is also required to be kept in mind that a Tribunal under review jurisdiction cannot proceed to re-examine the matter as if it is Original Application before it in the light of the ratio given in ***Subhash Vs.***

State of Maharashtra and other reported in AIR 2002 Supreme Court Cases, 2537.

9. Under grounds A and B, it has been said that though the Tribunal has declined to interfere with the amendment made in the transfer guidelines but at the same time, it has directed to implement the transfer policy prospectively and to make fresh exercise which goes contrary and renders the judgment and order of this Tribunal as unsustainable in the eyes of law. The learned counsel could not enlighten us as to what is the error apparent on the face of record or what new discovery has been made as far as the above point is concerned.

10. Ground 'C' pertains to factual aspects which does not come within the purview of review.

11. There cannot be any quarrel on point of that under Article 309 of Constitution of India, laws can be made with retrospective effect as said in the grounds 'D' and 'E'. But we have already observed in our judgment that the transfer guidelines in question have been amended with immediate effect as mentioned in its opening paragraph itself. As further mentioned in para 20 of our judgment, no retrospective effect can be given to any provisions so as to impair or take away an existing right unless those provisions either expressly or by necessary implication direct that it should have any retrospective effect. We have also observed in the above paragraph that whether any provisions has retrospective effect or not, primarily depends upon its language and its construction from which the intention has to be ascertained. But in the absence of any express provision in the policy in question and also in the absence of any necessary implication, we could not

find such an intent in favour of the K.V.S. There is no need to add any thing more on this point.

12. In grounds F and G also, no error apparent or discovery of any new and important material could be demonstrated.

13. Ground H deals with the implementation of the policy with retrospective effect which has already been discussed above.

14. Grounds I, J and K also do not disclose any error apparent in the judgment or discovery of any new and important material. All these points have already been discussed in detail in the judgment.

15. Under ground L, it has not been indicated as to how the judgment and order of this Tribunal goes contrary to the rules.

Moreover, any error or discovery of any new and important material could not be shown in respect of this point also.

16. In the last ground M, it is simply mentioned that there is an error apparent in the impugned judgment. But as discussed above, no such error apparent could be shown.

17. In view of the above, these review applications deserve to be dismissed and accordingly it is so ordered.

18. Let contempt petition No.41/2011 which is also clubbed may be listed on 9.5.2012

S/
Member (A)

HLS/-

Certified Copy

Section Officer (Judicial)
Central Board of Revenue Tribunal
High Court Bench, Lucknow

30-01-2012

S/
JUSTICE AKUR KUMAR SINGH
Member (J)

27.1.12