

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

REVIEW APPLICATION No.9/13

In

ORIGINAL APPLICATION NO. 522/2010

This, the 13th day of August, 2013

HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)

Manoj Masih, aged about 37 years son of late Sri Johnson resident of 21, Vikramaditya Marg, Christian Colony, Hazartganj, Lucknow.

Applicant
By Advocate Sri Praveen Kumar.

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India New Delhi.
2. The Commandant, Central Ordnance Depot, Kanpur U.P.
3. The Personal Officer (Civil), Central Ordnance Depot, Kanpur U.P.

Order(Under Circulation)

By Hon'ble Sri Navneet Kumar, Member (J)

The present Review Application is preferred by the applicant for reviewing the order dated 12th April 2013 passed in O.A. No. 522/2010 wherein, the Tribunal dismissed the O.A. of the applicant.

2. The facts of the case are that the applicant originally preferred the O.A. for quashing of the order dated 19.10.2010 and also prayed for grant of compassionate appointment to the applicant within the specified time.

3. By means of the present Review Application, the applicant pointed out that the respondents informed that another claim has come by one Smt. Jenifer claiming herself to be the wife of the deceased and it was suggested vide order dated 1.10.2004 and subsequently, on 10.3.2005, that unless succession certificate is submitted, no consideration will be made in this regard. Subsequently, two succession suits were filed. Both suits were

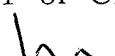
partly allowed and two sons namely Dany Anand and Katic Anand were found to be the legitimate sons of the deceased and directions were issued for issuance of certificate, in movable properties of the deceased to the extent of 1/4th each in favour of the applicant. The learned counsel for the applicant has also pointed out through the Review Application that certain correspondences were made between the applicant and the department and ultimately the impugned order dated 19.10.2010 was passed by which the claim of the applicant was rejected on the ground that he secured only 43 marks out of 100.

4. Learned counsel for the applicant has also categorically pointed out that the Tribunal has failed to consider that the OM dated 5.5.2003 is no more in existence and the cap of 3 years was quashed. It is to be pointed out that the DOP&T has issued another circular in the year 2012.

5. By means of the present Review Application, the applicant also pointed out that since the circular dated 5.5.2003 is no more in existence, as such, there is no bar for considering the case of the applicant. As mentioned by the applicant that there is no applicant No. 2, as such, this fact is undisputed, but the applicant No. 1 is the son of the deceased employee and the ex-employee died while he was in service.

6. The applicant, by means of the present Review Application, wants to re-open the entire issue afresh as all these points were taken by the applicant in the O.A. as well.

7. The Hon'ble Supreme Court in the matter of **Meera Bhanja v. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170** has decided the issue and has observed that review proceedings are not by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC. The review



petitions has to be entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has observed as under:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3).

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an 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-down process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale** wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record;

An error which has to be established by a long-down process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot

be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue a writ."

8. As categorically pointed out that the Court who has decided the matter cannot re-appraise the entire issue afresh. Only the typographical error or the error apparent on record can be rectified in the Review Application. By means of the present Review Application the applicant tried to reopen the entire matter afresh. The Tribunal while deciding the R.A. No. 34 of 2011 & O.A. No. 2232 of 2010 has relied upon the decision of the Hon'ble Apex Court in the case of **State of West Bengal and Ors. -vs- Kamal Sengupta and Another, 2008 (3) AISLJ 231,**

"5. In the matters concerning review the Tribunal is guided by Rule 47(1) of CPC. Also the decision of the Apex Court in Kamal Sengupta would be applicable in review matter being dealt with by the Tribunal. 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- Kamal Sengupta and Another, 2008 (3) AISLJ 231.** At para 28 the 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.
- (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.

6. It is clear that the ruling of the Supreme Court in **Kamal Sengupta (supra)** is that the crucial point is error on the face of the record. No such error on the face of the record has been shown by the applicants."

9. Even if the decision of the Tribunal in the OA is erroneous it cannot be corrected in a Review Application nor can a Tribunal write a second order since it can not sit as an appellate authority over its own earlier order. Considering the facts of the case and the law of the land as is laid down by the Hon'ble Apex Court I am of the view that the Review Application lacks merit as such fit to be dismissed.

10. The RA is dismissed. No costs.

VR. Agrawal
(Navneet Kumar)
Member (J)

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Cafayat order
dated 13-8-13
Bukhara
19-8-1412~~