

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00020/2014 in O. A. No.79/2012

Reserved on 6.1.2015

Pronounced on 15/1/15

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Prem Chandra Sachan aged about 65 years son of late Bihari Lal Sachan, resident of L-4/225, Vinay Khand, Gomti Nagar, Lucknow

Applicant

By Advocate: Sri S.P.Singh

Versus

1. Chief General Manager, Telecom, U.P.East, Telecom Circle, Hazratganj, Lucknow.
2. Deputy General Manager (Finance) Bharat Sanchar Nigam Limited, Office of General Manager (Telecom), The Mall, Kanpur-208001.

Respondents

By Advocate: Sri G.S. Sikarwar

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Review Application is preferred by the applicant u/s 22(3)(f) of AT Act, 1985 read with rule 17 of CAT (Procedure) Rules, 1987.

2. The O.A. No. 79/2012 was finally heard and reserved and judgment was pronounced on 31.3.2014. Subsequently, the applicant has preferred the review application on 29.5.2014. In the Review Application, the applicant has taken certain ground that on account of non-implementation of order passed by the respondents, the applicant has suffered a loss of interest and when the Tribunal is of the opinion that the order impugned is illegal and is quashed and respondents are directed to implement the order with all consequential benefits, as such the applicant is also liable to get interest.

3. Learned counsel for applicant has also filed an application for condonation of delay in filing the present review application.

4. During the course of arguments, the learned counsel for applicant has also drawn our attention towards prayer clause wherein the applicant has prayed for interest due to non-implementation of the orders. It is

argued by the learned counsel for the applicant that when an order is passed that the applicant is entitled for all consequential benefits but without any direction about the interest on the consequential benefits, as such there is an error apparent on the face of record and the same is liable to be corrected and the applicant is entitled to get interest on those amounts which has been withheld by the respondents and already been quashed by the Tribunal through judgment and order dated 31.3.2014.

5. On behalf of the respondents, reply is filed and through reply, it is indicated by the respondents that the judgment and order of the Tribunal is just, proper and in accordance with law and there is no error apparent on the face of record, as such, it deserves no interference by the Tribunal. The learned counsel for the respondents has also drawn our attention towards relief clause mentioned in the O.A and has indicated that the applicant has already prayed for grant of interest but after due consideration by the Tribunal, the impugned orders were quashed but interest were not directed to be paid to the applicant, as such there is no error apparent on the face of record. Any direction in regard to payment of any interest will amount to miscarriage of justice and also will amount to re-opening and re-hearing of the case.

6. The learned counsel for respondents has also relied upon a decision of the Hon'ble High Court in Review Petition No. 134/2013 wherein it is observed that "**the matter cannot be reopened, re-heard or re-apprised as per law laid down by the Hon'ble Supreme Court in 1995 (1) SCC 170 Meera Bhanja (Smt.) Vs. Nirmal Kumari Chaudhari, AIR 1980 SC 647 Northern India Caterers Vs. Lt. Governor Delhi , 1998 SCD 85 (DB) U.P. Pharmacy Council Vs. Yashkaran Singh.**"

7. The learned counsel for respondents vehemently argued and submitted that the present review application is liable to be dismissed as there is no error apparent on the face of record.

8. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the Review Application are reiterated and denied the contents of the counter reply.

9. Heard the learned counsel for parties and perused the records.

10. The O.A. was filed by the applicant, praying for quashing of certain orders as well as direct the respondents to implement the order dated 3.7.2011 and 30.6.2011 with all consequential benefits and the arrears be paid with 18% interest per annum. The applicant has prayed that his promotion in the grade of Chief Accounts Officer be released from due date for which DPC is already been held.

11. The O.A. was argued by the learned counsel for parties at length and after hearing the parties, the final order was passed, wherein Tribunal considering all the prayers made by the applicants and has indicated that the charge sheet was served upon the applicant on 30.10.2011 whereas the promotion has already been made and given effect to much earlier as such the period of misconduct which is shown in the charge sheet is 23.8.2008 to 30.4.2009 and the applicant has also superannuated on 30.4.2009 itself and as such there was no occasion for the respondents to wait till 30th October, 2011 for issuing charge sheet whereas first promotion to the post of STS adhoc cadre was given effect to vide order dated 3.7.2009 and another order was issued on 30.6.2011.

12. Considering all these submissions, the Tribunal quashed the order dated 4.11.2011 as well as 2.7.2011 as contained in Annexure No. 1 and 10 and respondents were directed to implement their orders dated 3.7.2011 and 30.6.2011 with all consequential benefits. While deciding the said O.A. the prayer for interest is categorically mentioned by the applicant but the same was not accepted and ordered by the Tribunal which is an implied meaning that the Tribunal was not convinced for granting any interest on the consequential benefits, as such the same was not awarded, It is clear that the prayer was already there in the O.A. and while deciding the O.A, it was not directed by the Tribunal for any interest ,as such, it

cannot be said that it is an error apparent on the face of record and it requires interference.

13. 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.

14. 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 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." ”

15. The Hon'ble Apex Court in the case of **Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs. Reported in (2009) 14 SCC 663** has been pleased to observe as under:-

“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. ”

16. **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."

17. The scope of review is very limited and it is not permissible for the Tribunal to act as an appellate authority in respect of original order passing a fresh order and re-hearing of the matter to facilitate a change of opinion on merits. The same principle was laid down in the case of **Union of India Vs. Tarit Ranjan Das 2004 SCC (L&S) 160.**

18. In **S. Nagraj and Ors. v. State of Karnataka and Anr., 1993 Supp (4) SCC 595**, the Hon'ble Apex Court explained the scope of review observing as under:-

"Review is permissible if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does not effectively deal with or determine any important issue in the case though argued by the parties. There may be merely a smoke-line demarking an error simplicitor from the error apparent on the face of record.

Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under mis-apprehension of true state of circumstances has been held to be sufficient ground to exercise the power."

19. In view of the above, review application is dismissed. No order as to costs.

J. Chandra
(Jayati Chandra)

Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-