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**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Review Application No. 20 of 2015

In re.

Original Application No. 399 of 2007

This the 18th day of May, 2015

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member -A

Nishakant Srivastava

.....

Review Applicant

By Advocate: Sri R.S. Gupta.

Versus.

Union of India & Others

.....

Respondents

By Advocate:

ORDER

By Ms. Jayati Chandra, Member-A

This Review Application has been filed by the Review applicant under Rule 17 of Central Administrative Tribunals (Procedure) Rules, 1987 praying for review of the judgment and order dated 15.9.2014 passed in O.A. no. 399 of 2007.

2. The present Review Application has been filed on 16.4.2015 whereas the copy of the judgment was received by the applicant's counsel on 19.9.2014 and as such the same has been filed beyond 30 days from the date of receipt of certified copy of the order sought to be reviewed as prescribed under Rule 17(1) of CAT (Procedure) Rules, 1987 which reads as under:

"Rule 18(1):- No application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed."

3. The applicant while preferring the present Review Application has taken a ground that the Tribunal has failed to consider that the applicant was entitled for notional promotion as there was no adverse effect upon Sri K.S. Pandey and other

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Seniors to the applicant and that the Tribunal has ignored to consider the fact that Sri K.S. Pandey was promoted to HSG II (NB) cadre w.e.f. 9.8.1989 and the case of the applicant was ignored on which date no adverse material, punishment or chargesheet was pending against him and that the seniority of Sri K.S. Pandey was fixed in compliance of judgment of CAT Allahabad Bench in O.A. no. 1083 of 1998 and if his seniority was alerted, it was obligatory for the department to issue notices to all seniors including the applicant who was neither made party nor the department which promoting Sri Pandey after re-fixing his seniority ignored the applicant, who was senior to Sri K.S. Pandey. Apart from that, the learned counsel for the applicant also indicated that the Tribunal has not considered the other relevant facts. Learned counsel for the applicant has also tried to re-open the entire issue afresh which is not permissible in the review jurisdiction.

4. We have gone through the judgment and order under review and have also looked into the grounds taken for review. The grounds so raised by the applicant in his Review Application have already been raised in the O.A. and the same has also been considered and dealt with in detail while passing the order under review. It is noteworthy that the order of the Tribunal was passed after hearing the both sides.

5. In the case of A. **Ajit Babu Vs. Union of India**, 1997 (6) **SCC 473**, while examining the provisions of Section 22 (3)(f) of the AT act and Rule 17(1) of CAT (Procedure) Rules, and also order 47 Rule 1 of CPC, the Hon'ble Supreme Court laid down that right of review is available to the aggrieved person or restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came up before Full Bench of Andhra Pradesh High Court in the case of **G. Narasimha Rao Vs. Regional Joint Director of School, Warangal & Others** reported in 2005 (4) **SLR 720**. The matter was also examined by the Full Bench with reference to Section 22 (3)(f) of the AT Act, 1985 and other relevant provisions of the CAT (Procedure) Rules, provisions of Limitation Act etc. and it was held that a Tribunal has no jurisdiction to condone the delay in filing the Review Application. It was laid

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down that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either sub section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act. The relevant portion of the order is as under:-

"11. Even assuming that the Limitation Act is not expressly excluded by the Administrative Tribunals Act or the Rules made thereunder, we have to see whether the scheme of the special law i.e. in this case Administrative Tribunals Act/Rules and the nature of remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern all the matters provided by it. If on an examination of the relevant provisions it is found that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act and the Rules made thereunder. In our view, even in case the Act/Rules does not exclude the provisions of Section 4 to 22 of Limitation Act by an express reference, it would none the less has to be examined whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the Act/Rules exclude their operations. The provisions of Section 3 of the Limitation Act envisage that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Whereas Rule 19 of the Rules which gives an preemptory command that no application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought.

12. Even otherwise the provisions of the Limitation Act which unless expressly excluded would be attracted can be made applicable to the nature of the proceedings under the Act/Rules, but the same is not what Section 29(2) of the Act says because it provides that Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. If none of them are excluded all of them are applicable whether those sections are applicable or not is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. Section 6 of Limitation Act, which provides for the extension of the period of limitation till after the disability in the case of a person who is either minor or insane or an idiot, is inapplicable to the proceedings under the Act/Rules. Similarly Sections 7 to 24 are in

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terms inapplicable to the proceedings under the Act, particularly in respect of filing of applications and the procedure to be followed under the Act/Rules. The applicability of those provisions has, therefore, to be judged not from the terms of limitation Act but by the provisions of the Administrative Tribunals Act 1985 and the Rules made thereunder relating to the filing of original applications and review applications and their disposal to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of the Act.

13. Rule 19 is couched in negative form and disables the person from seeking review under Section 22(e)(f) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay under Section 21 of the Act is applicable only to the applications filed under Section 19, but the same cannot be made applicable to the review sought under Section 22(3)(f). Sub-section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal, namely that the power of the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Government. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the premise that Limitation Act is made applicable in view of Sub-section (2) of Section 29 of the Limitation Act.

14. In the view we have taken, we answer the reference holding that the Administrative Tribunals Act and the Rules made thereunder are impliedly infer that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either Sub-section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act."

6. Thus, the right of review is available if such an application is filed within the period of limitation. If such a power 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 part feeling adversely affected by the said decision. A party in whose favour a decision has been given, cannot monitor

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the case for all times to come. Therefore, the public policy demands that there should be an ends of legal cases.

7. As regards the merit of the case is concerned, the scope of review is very limited. As observed by 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 spirit of order XLVII, Rule 1 of CPC as has been held in this judgment of Hon'ble Supreme Court.

8. In another 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

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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."

9. The Hon'ble Supreme 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:-

"It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order."

10. In view of the above, Review Application is dismissed on the ground of delay and also on merits. No costs.

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(Ms. Jayati Chandra)
Member -A

Girish/-

Navneet Kumar
(Navneet Kumar)
Member-J

*OK
Copy of order
Delivered 18-5-15
Proposed
19-5-15*