

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

Review Application No. 09 of 2015

In re.

Original Application No. 466 of 2011

Reserved on 30.3.2015

Pronounced on 06/07/2015

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member -A

Smt. Neelima Gupta, aged about 45 years, S/o Sri R.S. Gupta,
R/o C-99, Sector A, Mahanagar, Lucknow

..... Review Applicant

By Advocate: Sri A. Moin.

Versus.

1. Union of India through Secretary, Ministry of Communication and IT, Department of Posts, Dak Bhawan, New Delhi.
2. Director, Postal Services Headquarters Lucknow Region office of CPMG, U.P., Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.
4. Asstt. Senior Superintendent of Post Offices (East), Lucknow.
5. Sri P.L. Rathore, the then Asstt. Superintendent of Post Offices (East), Sector 18, Indira Nagar, Lucknow.

..... 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 20th January, 2015 passed in O.A. no. 466 of 2011.

2. The O.A. filed by the review applicant was partly allowed.

The operative portion of the order reads as under:-

"In view of the above, the O.A. is partly allowed. The order dated 13.9.2011 is quashed. We direct the respondents to conclude the disciplinary proceedings against the applicant so initiated pursuant to the chargesheet dated 29.2.2000 within a period of two months from the date of receipt of the copy of this order is produced. The applicant is also

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directed to cooperative with the same. The interim order, if any, passed earlier in this case stands vacated."

3. The learned counsel for review applicant submitted that the order dated 20th January, 2015 is liable to be reviewed in the light of the failure to consider the judgment of the Hon'ble Supreme Court in the case of **State of Andhra Pradesh Vs. N. Radha Krishnan reported in 1998 (4) SCC 154** as well as the ground raised in para 30 & 31 of the O.A. The grounds for review is "the Hon'ble Tribunal quashed the order dated 13.9.2013 which sought to amend the charge-sheet under 1964 Rules dated 29.2.2000, yet directed the respondents to conclude the inquiry in pursuance to the charge-sheet dated 29.2.2000 within two months- the same is an error apparent on the face of the record inasmuch as once the 1964 Rules for themselves been superseded not once by twice i.e. by 2001 Rules and thereafter by 2011 Rules, as such it is not legally permissible for the respondents to proceed with the inquiry.". 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 applicants in their Review Application have already been raised in the O.A. and the same have 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. 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.

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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 set out in order 47, would amount to an abuse of the 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

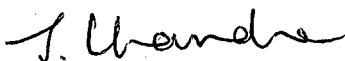
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Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" 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."

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:

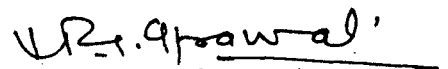
"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

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

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(Navneet Kumar)
Member-J