

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No.332/00025/2015 in

Original Application No.227/2011

This the 6th day of July, 2015

Hon'ble Sri Navneet Kumar , Member (J)

Jagdeo aged about 66 years son of Sri Lakhai r/o 17 A, Rajajipuram Para Road, Ram Vihar Colony, Lucknow.

Applicant

By Advocate Sri A.Moin

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (Personnel), North Eastern Railway, Ashok Marg, Lucknow.

ORDER (Under Circulation)

By Hon'ble Mr. 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 for reviewing the order dated 8.5.2015 passed in O.A. No. 227/2011, through which the Tribunal dismissed the O.A.

2. The grounds taken in the Review Application are that the Tribunal has not considered the order dated 31.12.1999 which was also on record in respect of 18 surplus Fireman II and they cannot be deprived of 30% of running allowance and declared surplus staff does not contain the name of the applicant hence in case the applicant was not declared surplus, he is entitled to 30% running allowance as Fireman II. Apart from this it is also submitted by the learned counsel for applicant that the Tribunal has not considered the running allowance is to be given to an employee on the basis of his working on the said post and it is admitted fact that on the basis of interim order granted by the Tribunal dated 9.12.1999, the applicant continued to work as Fireman II, hence the applicant is entitled to be given 30% running allowance. Apart from this, the applicant has also taken a

ground that there is error apparent on the face of record in para 16 of the judgment in as much as this Tribunal has given a finding of fact that the applicant has worked on the post of Fireman II on the basis of interim order.

3. While deciding the O.A., the Tribunal came to the conclusion that the post of Fireman II was rendered surplus as such the applicant is not entitled to get 30% running allowance. The grounds taken in the Review application was duly considered while deciding the O.A., as such the applicant cannot make an effort for re-appreciating the entire material once again by means of the review application.

4. The applicant has moved an application under Rule 17(3) of the CAT (Procedure) Rules, 1987 and taken a plea that the Review application is to be listed for hearing in open court. In respect to this, he has cited an order passed by the Hon'ble Apex Court dated 20.11.2012 passed in Review Petition (C) No. 2309 of 2012 in W.P. (C) No. 210/2012. While passing the order, the Hon'ble Apex Court observed as under:-

"The language of order XL Rule 3 of Part VIII of the Supreme Court Rules, 1966 makes it clear that an application for review shall be disposed of by circulation without any oral arguments "unless otherwise ordered by the Court."

5. The bare perusal of the order of the Hon'ble Apex Court is clear to the extent that the application for review can be disposed of by circulation without any oral arguments unless otherwise ordered by the Court. In this case, I do not find any reason to list this matter for oral arguments. Accordingly the present Review Application is decided under circulation.

6. 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.

7. 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."

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 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."

8. 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.

9. Considering the observations of the Hon'ble Apex Court as well as facts and circumstances of the case, I do not find any reason to review the order dated 8.5.2015. Accordingly, the Review Application is dismissed. No order as to costs.

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-

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Dated 6-7-15
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10-7-15