

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00036/2015 in
Original Application No. 388/2011

This the 15th day of October, 2015

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Sri O.P. S. Malik, Member (A)

Bhikam Swaroop Gangwar, aged about 57 years, son of Late Durga Prasad, resident of R-295/349, Asharfabad, Lucknow.

Applicant

By Advocate Sri Dharmendra Awasthi.

VERSUS

1. Union of India, through the Director General, Post Offices, Ministry of Posts, New Delhi.
2. The Post Master General, Bareilly Division, Bareilly.
3. Director , Postal Services, Bareilly Division, Bareilly.
4. Senior Superintendent of Post Offices, Bareilly Division, Bareilly.
5. Assistant Superintendent of Post Offices, Pilibhit.

Respondents

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 14.9.2015 passed in O.A. No. 388/2011.

2. While preferring the review application, the learned counsel for applicant indicated that the Tribunal's order is wholly erroneous and not legally sustainable, as the points raised in the O.A. are not considered by the Tribunal. It is also indicated that the applicant died during the course of enquiry as a result of which, he could not be examined. Hence the charges leveled against the applicant for embezzlement of the amount could not have been proved. Apart from this, it is also indicated by the learned counsel for the applicant that affidavit so filed by three persons stating therein that the full amount has been paid to Smt. Sarwari Begum and Abdul Gani then there was no occasion to prove the charges leveled against the applicant and the beneficiaries of the money order have already admitted that they have



received the money order, then there was no justification to level the charge against the applicant. Apart from this, another ground is taken that the applicant has been made scapegoat for no fault on his part and the Tribunal while deciding the O.A. dismissed the same without considering the plea/ ground taken by the applicant. As such, the order dated 14.9.2015 passed in O.A. No. 388/2011 is liable to be reviewed and the O.A. be restored to its original number.

3. While deciding the O.A., the grounds so raised in the present review application are considered by the Tribunal and also considered the affidavit so filed by the two persons. Not only this, the Tribunal also observed in regard to scope of judicial review in disciplinary matters when full fledged enquiry was conducted. The ground so taken by the applicant are considered by the Tribunal, as such the reviewing the order would amount to re-opening the entire issue afresh and Tribunal cannot sit as an appellate authority on its own judgment.

4. 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 confined 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.

5. 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."

6. 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.



7. Review is not appeal in disguised. **In Lily Thomas Vs. Union of India , the Hon'ble Apex Court held**

“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.”

8. 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.**

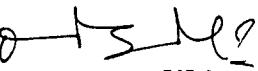
9. In the case of **M/s. Thungabhadra Industries Ltd. Vs. Government of Andhra Pradesh AIR 1964 SC 1372**, the Apex Court observed as under:-

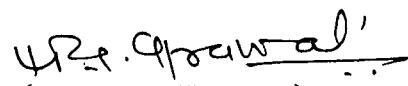
“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

10. The Hon'ble Apex Court in the case of **State of West Bengal and Others Vs. Kamal Sengupta and another reported in (2008) 8 SCC 612** after taking into account almost the entire case law on the subject of review, has held that an error which is not self evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22 (3) (f) of AT Act. An erroneous decision cannot be corrected in the guise of exercise of power of review and the review cannot partake the

character of an appeal. Not only this, review is not the remedy for the applicant to correct an erroneous judgment. The Tribunal has no power to review its judgment if there is no error apparent on the face of record. An attempt to re-agitate the issue is not permissible under Section 22 (3) (f) of the Administrative Tribunals Act, 1985.

11. Considering the observations of the Hon'ble Apex Court as well as facts and circumstances of the case, we do not find any reason to review the order dated 14.9.2015. Accordingly, the Review Application is dismissed. No order as to costs.


 (O.P. S. Malik)
 Member (A)


 (Navneet Kumar)
 Member (J)

HLS/-

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