

CENTRL ADMINISTTRATIVE TRIBUNAL

PATNA BENCH,PATNA

RA No. 90 of 2005

[In OA No.362 /05]

Patna, dated the 24<sup>th</sup> January, 2007

CORAM: The Hon'ble Ms. S. Srivastava, M[J]  
The Hon'ble Mr S.N.P.N.Sinha, M[A]

Shyama Kant Sahay, son of Late Raj Kishore Narayan Lal, Mohalla  
Aghoria Bazar, behind Girdhari Cold Store, PO Ramna,PS  
Kazimohammadpur.District Muzaffarpur.

Applicant

By : Mr. A. B Ojha, Senior Advocate

versus

1. The Union of India through the Secretary to the Govt. of India, Ministry of Finance, New Delhi.
2. The Central Board of Direct Taxes, New Delhi.
3. The Chief Commissioner of Income Tax, Patna.

Respondents

By : Mr. R.K.Choubey, ASC

ORDER

S.N.P.N.Sinha, M[A]:-

The present application has been filed for review of the order of this Tribunal in OA 362/05, dated 5.9.2005 by a Division Bench. The applicant, a retired Income Tax Officer, filed the aforesaid OA for direction to the respondents to dispose of the appeal filed against the penalty imposed on the applicant. It was stated by the respondents that the matter was pending before the Central Board of Direct Taxes. The respondents in that case did not put in any reply. The said OA No.362/05 was dismissed. It has been stated on the applicant's behalf that there is apparent error on the face of the order. The Bench did notice and referred to the communication of the Chief Commissioner of Income Tax to the applicant by letter dated 22/23.3.2005 which speaks of the order of punishment and the applicant's appeal against it pending before

the CBDT. The Tribunal ignored it and dismissed the application. A reference was made in the order to 379 cases of assessment dealt by the applicant but the fact was ignored that these cases went to Income Tax Appellate Tribunal, which set aside the order of the Commissioner of Income Tax and restored the order passed by the applicant as Income Tax Officer. Against the order of the Income Tax Appellate Tribunal, the Tribunal moved the Hon'ble High Court where also the Tribunal's judgment was confirmed. The then Inspecting Assistant Commissioner of Income Tax wrote to Commissioner, Income Tax, Patna that in view of the said verdict, the action of the applicant on assessment under Small Tax Payers Scheme stood vindicated and, consequently, he was promoted as Income Tax Officer. Hence, his request deserved consideration and the matter should be taken up with the Board. His appeal against the punishment was still pending till March 2005. Hence, the said order should be reviewed.

2. It has been submitted on the respondents' behalf that the application has not been moved with clean hands, copy of the applicant's representation or the alleged communication dated 12.1.2001, has not been annexed either in the original application or the review application. The order of the Tribunal dismissing OA 362/05 is based on sound reasoning. The representation made by the applicant regarding his crossing of first efficiency bar was finally decided against him and it was communicated to him on 13.7.1979, about 26 years ago. Similarly, the applicant's representation against adverse entry in his confidential report of the year 1973-74 was considered and rejected by the Central Board. It was conveyed to him on 22.12.1975.

3. In the order of the Tribunal in OA 262 of 2005, dated 5.9.2005, it has been stated that the case of the applicant is that he joined

2

as UDC in 1947. He retired as Assistant Commissioner of Income Tax in 1983. He was not allowed to cross efficiency bar with effect from 18.8.73. His prayer was that the respondents be directed to consider his representation and set aside the punishment with consequential benefits. The copy of the representation, it has been specifically mentioned in the order sheet, had not been filed with the OA. A reference has been made in Annexure-1 to the application, according to which, Deputy Commissioner, Patna sent a letter to the applicant stating that all papers regarding his case had been sent to Central Board, which is to take final decision and nothing was pending in the Deputy Commissioners office. It was stated on the respondents' behalf that his case for crossing efficiency bar was repeatedly considered and rejected. Since the applicant did not observe the instructions of the Board in the assessment of 379 cases, after consideration of his representation, neither the adverse remarks were expunged, nor the prayer in the representation accepted. The Tribunal held that in view of the repeated rejection of the case of the applicant and the fact that the cause of action relates to 1983, no action was called for at this stage.


4. It is well settled that the power of review available to the Tribunal has a very limited scope. The provision under Section 114, read with Order 47 of the CPC [along with Rule 1] has been clearly spelt out in the judgment of the Apex Court in the case of Ajit Kumar Rath vs. State of Orissa and others [2000[2] SLJ 108] which is as follows:-


“The power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47. The power is not absolute and it is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be

2

exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

5. The application, therefore, has no cogent reason justifying any intervention. It is, in the result, dismissed. No order as to costs.

  
[S.N.P.N. Sinha]  
Member[A]

  
[Sadhana Srivastava]  
Member[J]

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