

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Review Application No. 291/00005/2014
With
Misc Application No. 291/00069/2014
In
ORIGINAL APPLICATION No. 182/2012

Date of order : 19. 3. 2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. A.J. ROHEE, JUDICIAL MEMBER

Mahipal Yadav son of Late Banwari Lal, by caste Ahir (Yadav), aged about 56 years, resident of 13, Yadav Nagar, Nine Shop, Panipech, Jaipur. Presently working as Superintendent (Review), Central Excise Commissionerate, Jaipur.

... Applicant

Versus

1. The Chief Commissioner of Central Excise (JZ), New C.R. Building, Statue Circle, Jaipur.
2. The Commissioner of Central Excise, Jaipur II, New C. R. Building, Statue Circle, Jaipur.
3. Shri Ram Dev, Superintendent (AE), Central Excise Commissionerate II, Statue Circle, Jaipur.

... Respondents

ORDER BY CIRCULATION

The present Review Application has been filed by the respondents for reviewing/recalling the order dated 16th December, 2013 passed in OA No. 182/2012 with MA No. 312/2013 (Mahipal Yadav vs. Union of India & Others).

2. This Review Petition has been filed beyond the period of limitation and the applicant has filed a Misc. Application for the condonation of delay. However, we are not convinced with the reasons given by the respondents for filing the Review Application beyond the period of limitation. Moreover, the Full

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Bench of the Andhra Pradesh High Court in the case of **G.Nara Simha Rao vs. Regional Joint Director of School Education**

(W.P. 21738 of 1998) has already held that the Tribunal has no jurisdiction to condone the delay by taking aid and assistant of either sub-section (3) of Section 21 of the Administrative Tribunals Act or Section 29(2) of the Limitation Act.

3. Further the Hon'ble Supreme Court in the case of **K. Ajit Babu & Others vs. Union of India & Others**, 1997 SCC (L&S), in Para No. 4 has held that:-

".....The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as 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 a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

4. Therefore, this Review Application is not maintainable as it is filed beyond the period of limitation. Accordingly, the Misc. Application No.291/00069/2014 for condonation of delay stands dismissed.

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5. Even on merit the present Review Application is not maintainable. By means of this Review Application, the respondent are trying to reopen all issues decided by this Tribunal passed in OA No. 182/2012 with MA 312/2013 (Mahipal Yadav vs. Union of India & Others) which is not permissible under the law for review proceedings. We have perused the Review Application. It has been stated that the Hon'ble Central Administrative Tribunal heard the arguments of both the parties on 12.12.2013 and reserved their order and thereafter on 16.12.2013 passed the impugned order. In Para No. 15 of the said order, it has been wrongly recorded that the counsel for the respondents nos. 1 & 2 of the Review Application admitted that they would consider the case of the applicant in the light of Ashok Kumar's case. The counsel for the respondents did not mention any admission before the Bench that the case of the applicant, Mahipal Yadav, would be considered by the Department in the light of Ashok Kumar case nor there was any such instructions by the Department to their counsel. Thus there is an error apparent on the case of record as admission was wrongly recorded. Hence the order needs to be reviewed or admission recorded of the department needs to be corrected and withdrawn.

6. We have perused the order of this Tribunal dated 16.12.2013 passed by this Tribunal in OA No. 182/2012 with MA 312/2013 (Mahipal Yadav vs.. Union of India & Others). In Para 15 of the order, it has been clearly stated that the learned

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counsel for the respondents also admitted at Bar that they are willing to consider the case of the applicant in view of the order of the Central Administrative Tribunal, Chandigarh Bench in Ashok Kumar (OA No. 156-JK-2009) decided on 19.01.2010, which has been upheld by the Hon'ble High Court of Punjab & Haryana vide order 23.07.2010 and further upheld by the Hon'ble Supreme Court vide judgment dated 02.05.2011 (Annexure A/5). Therefore, respondent no. 2 was directed to consider the case of the applicant for stepping up of the pay of the applicant at par with his junior, Shri Ram Dev, by passing a reasoned & speaking order within a period of three months from the date of receipt of a copy of this order.

7. Since the learned counsel for the respondents admitted at Bar before the Bench, therefore, now to say that there was no admission on behalf of learned counsel for respondents nos. 1 & 2 of the Review Application would not be correct. The Tribunal is not aware about the instructions or the brief given by the respondent department to their counsel but at the time of arguments, the learned counsel for the respondents admitted at Bar before the Bench that they were willing to consider the case of the applicant in view of the case law, as referred to in Para 15 of the order dated 16.12.2013 passed in OA No. 182/2012. There is no reason to record the admission of the learned counsel for the respondents unless he did so. Why should the Bench record the admission of the learned counsel for the respondents if it was not made? Even with the Review Application, there is no personal affidavit of the learned counsel

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for the respondents who argued the case on 12.12.2013 to the effect that he did not make any such admission. Presumably, respondent no. 4 of the OA who has filed this Review Application on behalf of the respondent department was not present in the Court at the time of hearing otherwise he would have mentioned this fact in his Review Application that he was present in the Court and his counsel did not make any admission. There is no error in recording the admission of the respondents. The admissions of counsel of either party are not recorded by the Bench in a routine or careless manner. They are recorded only when they are made. The Bench knows its responsibilities well.

8. The learned counsel for the respondents who argued the case could have immediately pointed out this error (if at all) to the Bench as soon as he got the copy of this order but he did not point out this error to the Bench. Now at this belated stage, the contention of the respondents that it is an error cannot be accepted.

9. The Hon'ble Apex Court has categorically held that the matter cannot be heard on merit in the guise of power of review and further if the order or decision is wrong, the same cannot be corrected in the guise of power of review. What is the scope of Review Petition and under what circumstance such power can be exercised was considered by the Hon'ble Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa, (1999) 9 SCC 596 wherein the Apex Court has held as under:

"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or

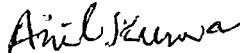
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under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after 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 exercised on account of some mistake of fact or error apparent on the face of record or for any other sufficient reason. A review cannot be claimed or asked for 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 fact without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order XL VII Rule 1 CPC means a reason sufficiently analogous to those specified in the rule".

10. Therefore, the present Review Application is liable to be dismissed not only on the point of limitation but also on merit. We do not find any patent error of law or facts in the order dated 16th December, 2013 in OA No. 182/2012 with MA 312/2013 (Mahipal Yadav vs. Union of India & Others). Therefore, in view of the law laid down by the Hon'ble Apex Court, we find no merit in this Review Application and the same is accordingly dismissed. We are taking a very lenient view and, therefore, not imposing a cost on the respondents.



(A.J. Rohee)
Member (J)



Anil Kumar
Member (A)

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