

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**Review Application No.291/00014/2014
In
Original Application No. 806/2012**

Date of order : 15.7.2014

CORAM :

**HON'BLE SHRI ANIL KUMAR, MEMBER (A)
HON'BLE SHRI M.NAGARAJAN, MEMBER (J)**

Madhvi Sharma daughter of Shri P.M.Sharma, resident of
81/113, Mansarovar, Jaipur.Applicant

V/s.

1. Union of India, through Joint Commissioner, KVS,
Institutional Area, New Delhi.
2. Deputy Commissioner, KVS, Bajaj Nagar, Jaipur.
....Respondents

PER : HON'BLE SHRI M.NAGARAJAN, MEMBER (J)

ORDER BY CIRCULATION

The present review application is filed by the applicant for reviewing/ recalling the order dated 28-5-2014 passed in OA No.806/2012. The prayer sought by the applicant in OA No.806/2012 was to quash and set aside the order dated 18-7-2012 and for a direction to the respondents to reinstate her into service with all consequential benefits. Under the said order dated 18-7-2012 the respondents have terminated the services

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of the applicant retrospectively w.e.f. 18-8-2008. The reliefs sought by the applicant were rejected by the Tribunal holding that there were no reasons to interfere with the said impugned order dated 18-7-2012.

2. We have carefully perused the review application and the judgment relied upon by the applicant in support of his prayer which is annexed to the review application.

3. The grounds urged by the applicant in support of his prayer for reviewing/recalling the order in the said OA No.806/2012 are as under:

- (i) Certain facts and rules position which were not at all addressed in the reply or during the course of the arguments by the respondents were taken into account.
- (ii) The judgment of the Hon'ble High Court of Kerala in the case of *State of Kerala v. A.P.Janardhanan* (WA No.2773 of 2007 – decided on 28/03/2008) supports the case of the applicant, but the Tribunal has applied the said decision without appreciating the fact that the Kerala State rules have provision for passing the order with retrospective effect, whereas in Kendriya Vidyalaya Sangathan there is no such provision which provides that services can be terminated with retrospective effect.

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(iii) A confirmed employee is having right provided under Article 311 of the Constitution of India to defend his/her arguments about B.Ed. The provisions of Article 311 of the Constitution of India are having binding effect and there is no provision under the law which overrides provision of Article 311 of the Constitution of India. The Tribunal has relied upon the judgment of the Rajasthan High Court which is not applicable to the case of the applicant. The Tribunal has not at all taken into consideration the submission made by the applicant and the respondents never argued Article 44 of the Education Code of Kendriya Vidyalaya Sangathan.

(iv) It was never established before the Tribunal that B.Ed. was necessary degree at the time of appointment and also at the time of termination of the services of the applicant.

(v) The Tribunal has wrongly interpreted the judgment of the Rajasthan High Court in the case of *Sandhya Bhatnagar v. State of Rajasthan & Ors.* [in S.B.Civil Writ Petition No.4367/1993 - RLW 2004(2) Raj 974]

4. Now the question before us is whether the aforesaid grounds urged by the applicant warrant a review of the order under 28-5-2014 in said OA NO.806/2012. While dealing with

— T. U. C. P. —

this question we may observe the principles culled out by the Hon'ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209. In the said case, the Hon'ble Supreme Court has held that the Tribunal can exercise the power of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon'ble Supreme Court has laid down the principles which are to be borne in mind by the Tribunal in exercise of the power of review. At para 28 of the said judgment the Hon'ble Supreme Court culled out the principles which are:

- "(i) *The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC.*
- (ii) *The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
- (iii) *The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) *An error which is not self-evident and which can be discovered 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).*
- (v) *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- (vi) *A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a*

coordinate or larger Bench of the Tribunal or of a superior Court.

- (vii) *While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*
- (viii) *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”*

5. We have carefully perused the grounds urged by the applicant in the light of the principle laid down by the Hon'ble Supreme Court in said *Kamal Sengupta's* case (*supra*) and in the process we find that there is no error apparent on the face of the record justifying the exercise of power under Section 22(3)(f) of the Administrative Tribunals Act. In our opinion, the grounds urged by the applicant in the review application are already urged by the applicant in support of his prayer for quashing the order dated 18-7-2012 which was impugned in OA No.806/2012 and upon perusal of pleadings and grounds urged by the applicant in OA No.806/2012, five points were articulated for deciding the claim of the applicant in the order under review and the same are as under :

- “(i) *Whether the applicant could be terminated from service with retrospective effect from 18/08/2008.*
- (ii) *Whether applicant can be terminated from service, after she was confirmed vide order dated 19/09/1990 (Annexure-A/3).*

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- (iii) *Whether the principle that a confirmed employee cannot be terminated/ removed from service without holding a regular enquiry is applicable to the facts and circumstances of the case.*
- (iv) *Whether Para 5 (i) of appointment order dated 07/08/1987 comprises two sets of appointees or only one.*
- (v) *Whether B.Ed. qualification is a prescribed qualification for the post of PGT under the relevant rules.”*

6. All the aforesaid five points were answered by us.

Hence, we are of the view that the facts as mentioned in the original application and the arguments advanced by the learned counsel for the original applicant in OA No.806/2012 and legal position were considered by us before passing the order in OA.No.806/2012. Thus, according to us there is no error either on fact or on law on the face of the record. This review application has no merit and it needs to be dismissed.

7. We may also refer to the judgment of the Hon'ble Supreme Court in *Ajit Kumar Rath v. State of Orissa*, (1999) 9 SCC 596. The Hon'ble Supreme Court has categorically held that a matter cannot be heard on merit in the case of power of review and if the order or decision is wrong, the same cannot be corrected under the guise of power of review. What is scope for review petition and under what circumstances such power can be exercised was considered by the Hon'ble Apex Court in *Ajit Kumar Rath's* case (*supra*) and held as under:

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"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or 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 the 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 47 Rule 1 CPC means a reason sufficiently analogous to those specified in the rule."

8. We may also add that the Hon'ble Supreme Court in the case of *Meera Bhanja (Smt) v. Nirmala Kumari Choudhury (Smt)* (1995) 1 SCC 170 held as under :

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An 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. The limitation of powers of court under Order 47, Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226."

9. Thus by applying above principles to the facts and circumstances of the case and the grounds urged by the applicant in support of his prayer to review the order dated 28-

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5-2014 in the said O.A. No.806/2012, we do not find any error apparent on the face of the record justifying exercise of power under Section 22(3)(f) of the Administrative Tribunals Act, 1985 and consequently the review application deserves to be dismissed and accordingly the same is dismissed.

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(M.Nagarajan)
Member(J)

Anil Kumar
(Anil Kumar)
Member(R)

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