CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

16

ORDERS OF THE BENCH

Date of Order: 04.10.2012

RA No. 19/2011 (in OA No. 428/2009) with
MA No. 207/2011 & MA No. 263/2011

Mr. S.L. Songara, counsel for applicant.
Mr. M.D. Agarwal, counsel for respondents.

Heard learned counsel appearing for the respective parties.

Review Application as well as both the Misc. Applications stand disposed of by a separate order on the separate sheets for the reasons recorded therein.

(ANIL KUMAR)
MEMBER (A)

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Review Application No. 11/2011
(ORIGINAL APPLICATION NO. 429/2009)
With
Misc. Application Nos. 146/2011 & 262/2011

And

Review Application No. 19/2011
(ORIGINAL APPLICATION NO. 428/2009)
With
Misc. Application Nos. 207/2011 & 263/2011

DATE OF ORDER: 04.10.2012

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Review Application No. 11/2011

Hanumansahai, age 70 years, S/o Bhawani Shankar, retired from the post of Pharmacist from National Institute of Ayurveda, Madhav Vilas, Amer Road, Jaipur, Rajasthan, R/o Jaisinghpura Khor, Ward No. 52, Jaipur, Rajasthan.

...Applicant

Mr. S.L. Songara, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. National Institute of Ayurveda through Director, Madhav Vilas Amer Road, Jaipur, Rajasthan.

... Respondents

Mr. M.D. Agarwal, counsel for respondents.

Review Application No. 19/2011

Gopal Lal Sharma, age 65 years, S/o Shri Shiv Prashad Sharma, R/o 5-Gha-11, Jawahar Nagar, Jaipur, Rajasthan, retired from the post of Pharmacist from National Institute of Ayurveda, Madhav Vilas, Amer Road, Jaipur.

...Applicant

Mr. S.L. Songara, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. National Institute of Ayurveda through Director, Madhav Vilas Amer Road, Jaipur, Rajasthan.

... Respondents

Mr. M.D. Agarwal, counsel for respondents.

ORDER (ORAL)

With the consent of the learned counsels for the respective parties, both the above said Review Applications have been heard together and are being disposed of by this common order since both the Review Applications involve similar question of law and facts.

2. Hanumansahai, review petitioner (RA No. 11/2011) filed D.B. Civil Writ Petition No. 347/2011 against the order dated 07.10.2010 passed by this Bench of the Tribunal in OA No. 429/2009. The said Writ Petition was disposed of by the Division Bench of the Hon'ble High Court, Jaipur Bench vide order dated 07th April, 2011 observing as follows:

> "Heard the learned counsel for the petitioner.
>
> The submission of the learned counsel for the petitioner is that while deciding the OA vide order dated 7th October, 2010, the learned Tribunal has taken into consideration the decision given in Savitri Devi Sharma's case which was distinguishable and the same is not applicable to the present case. He has further submitted that the learned Tribunal has wrongly applied the aforesaid decision to the present case.
>
> So far as the aforesaid grievance of the petitioner is concerned, it is for the petitioner to file a review petition before the learned Tribunal and to point out the aforesaid discrepancy. In case, any such review petition is filed before the learned Tribunal, the petitioner would be entitled to claim for condonation of delay on account of pendency of proceedings before this Court.

Subject to the above, the writ petition stands disposed off."

3. Gopal Lal Sharma, review petitioner (RA No. 19/2011) filed D.B. Civil Writ Petition No. 6210/2011 against the order dated 07.10.2010 passed by this Bench of the Tribunal in OA No. 428/2009. The said Writ Petition was disposed of by the Division Bench of the Hon'ble High Court, Jaipur Bench vide order dated 13.05.2011 observing as follows:

"It is submitted by the counsel for the appellant that in similar matter following order has been passed in D.B. Civil Writ Petition No. 347/2011 (Hanumansahai Vs. Central Administrative Tribunal & Ors. on 07.04.2011: -

"Heard the learned counsel for the petitioner.

The submission of the learned counsel for the petitioner is that while deciding the OA vide order dated 7th October, 2010, the learned Tribunal has taken into consideration the decision given in Savitri Devi Sharma's case which was distinguishable and the same is not applicable to the present case. He has further submitted that the learned Tribunal has wrongly applied the aforesaid decision to the present case.

So far as the aforesaid grievance of the petitioner is concerned, it is for the petitioner to file a review petition before the learned Tribunal and to point out the aforesaid discrepancy. In case, any such review petition is filed before the learned Tribunal, the petitioner would be entitled to claim for condonation of delay on account of pendency of proceedings before this Court.

Subject to the above, the writ petition stands disposed off."

In view of aforesaid order, as prayed, appeal is disposed of."

4. From the above, it reveals that during the course of arguments in D.B. Civil Writ Petition No. 347/2011 before the Hon'ble Rajasthan High Court, Jaipur Bench, learned counsel appearing for the review petitioner submitted that while deciding

the OA vide order dated 7th October, 2010, the learned Tribunal has taken into consideration the decision given in Savitri Devi Sharma's case which was distinguishable and the same is not applicable to the present case. He has further submitted that the learned Tribunal has wrongly applied the aforesaid decision to the present case.

The Hon'ble Rajasthan High Court observed that so far as the aforesaid grievance of the petitioner is concerned, it is for the petitioner to file a review petition before the learned Tribunal and to point out the aforesaid discrepancy. In case, any such review petition is filed before the learned Tribunal, the petitioner would be entitled to claim for condonation of delay on account of pendency of proceedings before this Court.

5. Further, in view of the above, the applicant, Hanumansahai, has filed Review Application No. 11/2011 (OA No. 429/2009) along with M.A. No. 146/2011 praying for condonation of delay in filing Review Application, and the applicant, Gopal Lal Sharma, has filed Review Application No. 19/2011 (OA No. 428/2009) along with M.A. No. 207/2011 praying for condonation of delay in filing Review Application.

6. Having considered the submissions made on behalf of the respective parties and considering the observations made by the Hon'ble Rajasthan High Court, Jaipur Bench vide order dated 07th April 2011 in DB Civil Writ Petition No. 347/2011 and order dated 13.05.2011 in DB Civil Writ Petition No. 6210/2011 that in case, any such review petition is filed before the Tribunal, the

petitioner would be entitled to claim for condonation of delay on account of the pendency of proceedings before this Court, both the MA No. 146/2011 and 207/2011 stand allowed. Thus, delay caused in filing Review Applications is condoned.

7. We have heard learned counsels appearing for the respective parties in Review Applications and carefully perused the common order dated 07.10.2010 passed by this Bench of the Tribunal in OA No. 428/2009 (Gopal Lal Sharma vs. UOI & Anr.) and 429/2009 (Hanuman Sahai vs. UOI & Anr.) as well as order dated 05.08.2009 passed by this Bench of the Tribunal in TA No. 12/2009 (CWP No. 5723/1995) – Smt. Savitri Devi Sharma vs. the National Institute of Ayurveda & Anr.

8. We have considered the submissions of the learned counsel for the petitioner made before the Hon'ble Rajasthan High Court, Jaipur Bench that while deciding the OA vide order dated 07th October, 2010, the Tribunal has taken into consideration the decision given in Savitri Devi Sharma's case, which was distinguishable and the same is not applicable to the present case, besides submitting that the Tribunal has wrongly applied the aforesaid decision to the present case.

9. From bare perusal of para 7, 8 and 9 of the order dated 05th August, 2009 in the case of Smt. Savitri Devi Sharma, (supra), it appears that while rendering the judgment in the case of Smt. Savitri Devi Sharma, this Bench of the Tribunal has considered the ratio decided by the Hon'ble Apex Court in the case of **Sita Devi & Ors. vs. State of Haryana and Ors.**

reported in 1996 SCC (L&S) 1321, and also considered the ratio decided by the Hon'ble Apex Court in the case of **State of Bihar vs. Bihar State + 2 Lecturers Associations**, reported in AIR 2007 SC 1948 and in the case of **Sohan Singh Sodhi vs. Punjab State Electricity Board, Patiala,** reported in (2007) 2 SCC (L&S) 198. Further, considered the ratio decided by the Three Judge Bench of the Hon'ble Supreme Court in the case of **Government of West Bengal vs. Tarun Kumar Roy,** reported in 2004 SCC (L&S) 225 whereby '*the Hon'ble Apex Court after noticing several other decisions held that parity in pay cannot be claimed when the educational qualification is different'*. Thus, viewing the matter in the light of law laid down by the Apex Court, this Bench of the Tribunal was of the view that the applicant is not entitled to any relief.

10. Learned counsel appearing for the review applicants is not able to distinguish the order dated 05th August, 2009 passed by this Bench of the Tribunal in TA No. 12/2009 (CWP No. 5723/1995) - Smt. Savitri Devi Sharma vs. the National Institute of Ayurveda & Anr. In our considered view, the ratio decided by this Bench of the Tribunal vide order dated 05th August, 2009 in the case of Smt. Savitri Devi Sharma vs. the National Institute of Ayurveda & Anr. (supra) is fully applicable to the facts and circumstances of the case of applicants. Thus, in our view, the controversy involved in the case of the present applicants is squarely covered by the decision taken in the case of Smt. Savitri Devi Sharma (supra).

11. Accordingly, in our considered view, the common order dated 07.10.2010 passed by this Bench of the Tribunal in OA No. 428/2009 (Gopal Lal Sharma vs. UOI & Anr.) and OA No. 429/2009 (Hanuman Sahai vs. UOI & Anr.) requires no review / interference by this Tribunal, and as such both the Review Applications deserve to be dismissed.

12. Besides the above, we are of the view that the present Review Applications are wholly misconceived due to the limited scope of review application provided under the law. The Hon'ble Apex Court in the case of Ajit Kumar Rath vs. State of Orissa, reported in AIR 2000 SC 85 has held as under:-

> "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 CPC. The power is not absolute and 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 exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reasons. 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 face without any elaborate argument being needed for establishing it."

13. In view of the above, the applicants have not made out any case within the four corners of the aforesaid legal position. It appears that by way of the present Review Applications, the applicants are claiming that this Tribunal should again re-appreciate the facts and material placed on record, and render a

judgment again on merits, which is beyond the preview of this Tribunal while exercising the powers of review conferred upon it under the law.

14. Further, the Hon'ble Apex Court in the case of Smt. Meera Bhanja vs. Nirmal Kumari, reported in AIR 1995 SC 455 observed that re-appreciating facts/law amounts to overstepping the jurisdiction conferred upon the Courts/Tribunal while reviewing its own decision. In the present review applications also, the applicants are trying to claim re-appreciation of the facts and the material placed on record which is decidedly beyond the power of review conferred upon the Tribunal as held by Hon'ble Supreme Court.

15. In view of the above legal position, we do not find any error apparent on the face of record to review the order in question and accordingly both the Review Applications are dismissed having no merits.

16. In view of the order passed in Review Applications, order is required to be passed in MA No. 262/2011 (in RA No. 11/2011) and MA No. 263/2011 (in RA No. 19/2011) filed on behalf of the applicants. Accordingly, both the Misc. Applications stand disposed of.

copy given vide
No-1258 To 1261
9/10/12

(ANIL KUMAR)
MEMBER (A)

(JUSTICE K.S. RATHORE)
MEMBER (J)

kumawat