

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This is the 24th day of August, 2018.

Review Application No. 00033 of 2017
IN
ORIGINAL APPLICATION NO. 282 of 2003

Present:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior Divisional Personnel Officer, Northern Railway, Moradabad.
3. Divisional Commercial Manager, Northern Railway, Moradabad.

.....Applicants.

By Advocate: Shri P. Mathur

VERSUS

Gopal Kishan Soti, son of Late Shri Kishan Soti, Resident of Krishnapur, Linepar, Moradabad, presently working as Junior Inspector, Ticket Northern Railway, Moradabad.

.....Respondent

By Advocate : Shri A. Srivastava

O R D E R

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

1. The present Review Application has been filed by the applicant (respondent of O.A. No. 818/2011) u/s 22(3)(f) of Administrative Tribunals Act, 1985 read with rule 17 of CAT (Procedure) Rules, 1987 on 18.7.2017 for reviewing the order dated 02.05.2017 passed by this Tribunal in O.A. No.282/2003 titled Gopal Kishan Soti v/s Union of India and others.
2. Alongside the review application, an application has been filed for condonation of delay in filing the Review application. In para No.4 of the application

seeking condonation of delay, it is stated that "That as the matter relates to the different claims filed by the applicant, which infact are more or less interlink and as such the certified copy of all the orders received by the registered clerk of the conducting Counsel could be made available only on 15/06/2017 through internet as the Counsel for the Respondents/Railway Administration was at Forties Hospital, Noida in connection with major operation of his wife"

3. Certain facts may be noted:

- 1) Order under review is dated 02.05.2017
- 2) Certified copy is dated 08.05.2017
- 3) Certified copy of all the orders received by the registered clerk of the conducting Counsel could be made available only on 15/06/2017 through internet
- 4) Condonation application filed on 18.07.2017

4. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 prescribes the manner in which review is required to be filed. Limitation is prescribed under sub-rule (1) of rule 17, which reads as under:

"(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

Under rule 17(1) the limitation prescribed for filing of review application is thirty days from the date of receipt of copy of the order sought to be reviewed.

5. Two circumstances come out against the applicants, viz., as per, the certified copy, it is dated 08.05.2017 and as per the record summoned from the

Registry, the certified copy was ready on 8.5.2017 and issued on 8.5.2017 and secondly, even if the averment in para No. 4 is taken to be true that orders received by the registered clerk of the conducting Counsel could be made available only on 15/06/2017 through internet, the application being filed on 18.07.2017 does not said the cause of applicant for condoning the delay.

6. It is undisputed that the present review application is filed beyond the period of limitation as provided under the Administrative Tribunals Act.

7. In the case of K.Ajit Babu Vs. Union of India 1997 (6) SCC 473 (para 4), while examining the provisions of Section 22(3)(f) of the AT Act and Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, the Hon'ble Apex Court laid down that right of review is available to the aggrieved person on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came up before the Full Bench of Andhra Pradesh High Court in the case of G.Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others -2005(4) SLR 720. The matter was also examined by the Full Bench with reference to Section 22(3)(f) of the AT Act, 1985 and other relevant provisions of the CAT (Procedure) Rules, provisions of the Limitation Act etc. and it is held that "a Tribunal has no jurisdiction to condone the delay in filing the Review Application." It was laid down that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either sub section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act. It may be mentioned here that provisions of Rule 19 of A.P. Administrative Tribunal (Procedure) Rules,

1989 which are similar to above Rule 17(1) of CAT (Procedure) Rules, 1987 were also considered which are as under:- " No application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed."

8. Thus 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 without any limitation then no decision would be final because 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. Therefore, the public policy demands that there should be an end to legal cases.

9. The reasons given by respondents for the delay in filing the review are far from correct. There is absolutely no plausible explanation offered by the respondents to condone the delay. On account of the negligence of the review applicants, we are not inclined to condone the delay in the present case.

10. Even so, we have given our thoughtful consideration to the merits of the review application as well. In detailed judgment dated 02.05.2017 which is sought to be reviewed, this Tribunal held that

"5. We have perused the impugned order Annexure A/5. The contents of the said order clearly reveal that the applicant's appointment/promotion to the post of Chief Inspector Ticket (Law) was

pursuant to some selection and he was placed in the higher grade of Rs.6500-10500. The appointment was not as a stop gap arrangement and seems to be on substantive basis against the available post. Even it is assumed that promotion of the applicant to the post is deficient in any manner, the respondents were required to at least observe the principles of natural justice by issuing a show cause notice to him. Admittedly, principles of natural justice have not been observed. The applicant was regularly promoted and vide impugned order reverted to the post of Junior Inspector Ticket. The impugned order is thus liable to be set aside for non-observance of principles of natural justice. This petition is accordingly allowed. The order impugned dated 13.9.2002 is hereby set aside. As a consequent of setting aside of the impugned order, the status of the applicant shall be restored within a period of two weeks from the date of receipt of a copy of this order. Needless to say that the applicant shall be entitled to consequential benefits on setting aside of reversion. Setting aside of the impugned order shall not be a bar for the respondents from acting in accordance with law, if they so desire and circumstances so permit

11. The review applicants have taken the following grounds for seeking review :-

"A. Because the post of Chief Inspector of Tickets in the scale of Rs.6500-10500/- is a selection post and as such any order passed cannot be construed to be a regular promotion. The very utilization of the services of the applicant to the post of Chief Law Assistant (Commercial) will not create any legal

enforceable right upon the applicant for his continuance on the post.

B. Because the applicant was not within the zone of consideration as the post of Ticket Checking Cadre was against the avenue of promotion and as such applicant was not within the zone of consideration and not permitted to appear in the selection for the said post held in 2003.

C. Because applicant has been repatriated to his substantive post as per implementation of reversion order dated 13.9.2002.

D. Because applicant without any supportive evidence have simply mentioned that against reversion order dated 03.2.2003, he had preferred appeal on 16.09.2002 but factum of receiving such appeal has been specially denied in para 3 of the counter filed in the O.A."

12. It is settled law that review jurisdiction is available only on the grounds prescribed under Order XLVII Rule 1 of the Code of Civil Procedure, which contains only three grounds -

- (i) mistake or error apparent on the face of record;
- (ii) discovery of new and important matter or evidence, which, even after exercise of due diligence, was not within the knowledge of the review petitioner or could not be produced by him at the time when the order sought to be reviewed was passed; and
- (iii) for any other sufficient reason.

(iv) The law governing the scope of review has been very succinctly laid down by the Hon'ble Court in:

13. The law governing the scope of review has been very succinctly laid down by the Hon'ble Court in:

- I. *Ajit Kumar Rath v. State of Orissa and others*, (1999) 9 SCC 596, 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. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.
- II. *Union of India v. Tarit Ranjan Das*, 2004 SCC (L&S) 160, the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an appellate court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.
- III. *Inder Chand Jain(Dead) Through Lrs, Vs.Motilal (Dead) Through Lrs*. Reported in (2009) 14 SCC 663, 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.

IV. Review is not appeal in disguised. In Lily Thomas Vs. Union of India, 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."

14. Keeping in mind the principles laid down by the Hon'ble Apex Court in the above decisions, let us consider the claim of the review petitioner and find out whether a case has been made out by them for review of the order dated 02.05.2017 passed in OA No.282 of 2003.

15. After going through the records of OA No.282 of 2003 and of the present R.A., we have found that the applicant-review petitioner has more or less repeated their old arguments which have been overruled by the Tribunal, vide order dated 02.05.2017(ibid). It has been contended by the applicants that the Tribunal has failed to appreciate the materials available on record as well as the contentions raised by them. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. The appreciation of evidence/materials on record, being fully within the domain of the appellate court, cannot be permitted to be advanced in the review petition. In a review petition, it is not open to the Tribunal to re-appreciate the evidence/materials and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence/materials and contentions of the parties, which were available on record, cannot be assailed in a review petition, unless it

is shown that there is an error apparent on the face of the record or for some reason akin thereto. The applicant-review petitioners have not shown any material error, manifest on the face of the order under review dated 02.05.2017, which undermines its soundness, or results in miscarriage of justice. If the applicant-review petitioner is not satisfied with the order passed by this Tribunal, remedy lies elsewhere. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court.

16. Through this review application, the review applicants want to re-open the entire issue a fresh which is not permissible in review. "Review is permissible if there is an error of procedure apparent on the face of the record. The order was passed after hearing both the parties and all the points were discussed in the judgment which are again taken by the applicants in the review application, as such we found no error apparent on the face of record.

17. In the light of what has been discussed above, we do not find that the review application is covered by the aforementioned three grounds to justify a review of the order dated 02.05.2017.

18. We do not find any valid ground to interfere. Thus, the review application is dismissed both on ground of limitation and on merits. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-