

(Reserved on 31.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 13th DAY of November, 2018)

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

Civil Misc. Review Application No. 330/00039/2018
In
Original Application No. 330/00637/2018.

Nafees Ahmad, aged about 54 years, Son of Riaz Ahmad, working as Senior Parcel Clerk, Kanpur Central Railway Station, Kanpur.

.....applicant

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.
4. Senior Divisional Commercial Manager, North Central Railway, Allahabad Division, Allahabad.

.....Respondents

Advocate for the Applicant :-

Shri A.K. Srivastava

Advocate for the Respondents:-

Shri A.K. Rai

O R D E R

(Delivered by Hon'ble Mr. Gokul Chandra Pati, AM)

The instant Review Application is directed against the order dated 05.07.2018 (Annexure RA-1) passed by this Tribunal in OA No. 637/2018 (Nafees Ahmad Vs. U.O.I. & Ors) and it is filed by the applicant in the OA.

2. The facts, in brief, are that the applicant was imposed a penalty by the disciplinary authority vide order dated 04.08.2017,

which was confirmed by the appellate authority vide order dated 09.01.2018. Against both the orders dated 04.08.2017 and 09.01.2018, the applicant filed OA No. 637/2018, which was dismissed by this Tribunal vide order dated 05.07.2018 at the admission stage and it was held that the OA was not maintainable since the applicant has not exhausted the remedy of revision, which is provided under the rules.

3. The review application has been filed on 31.07.2018, which is within time. It is filed mainly on following grounds: -

i. The applicant's counsel cited a judgment dated 05.09.1994 of Full Bench (Allahabad) of this Tribunal in OA No. 1227/92 – Bhagwan Deen & Ors. Vs. UOI & Ors and had also referred to para 24 relating to special provision for non-gazetted staff in Railway Servants (Discipline & Appeal) Rules, 1968. As per the finding of the Full Bench judgment of CAT, Allahabad, the OA could not be thrown out on the ground that the alternative remedy available has not been exhausted.

ii. The Tribunal did not take into consideration the Article 141 of Constitution of India regarding law of Precedents.

iii. The order of the Full Bench (Calcutta CAT) in OA No. 1093/2016 – Amitabh Sarkar Vs. UOI & Ors, which was relied by this Tribunal while passing the impugned order, was challenged before Hon'ble High Court, Calcutta in Writ Petition No. 27/2017, in which it was held that the order of the Tribunal was not sustainable and the matter was remitted to the Tribunal for fresh consideration on merits. Therefore, the decision relied upon by the Tribunal has been reversed by the Hon'ble High Court, hence the impugned order is not maintainable.

4. The respondents have filed objection stating that the reasons given in the review application do not fall within the domain of Order 47 Rule 1 of CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985. It is further stated that the applicant has wrongly stated in para 6 of the OA that he has exhausted all the remedies.

5. Review Application was heard. Shri A.K. Srivastava, learned counsel for the applicant stressed on the point that the judgment of Calcutta Bench of this Tribunal in OA No. 1093/2016, which was relied upon by this Tribunal while dismissing the OA vide order dated 05.07.2018 has been reversed by the Hon'ble High Court, Calcutta vide order dated 24.06.2017, copy of which has been annexed at RA-8 to the Review Application. It is seen from the record that when the OA was considered by this Tribunal on 05.07.2018 about its maintainability, the order dated 24.06.2017 by the Hon'ble High Court was not produced before this Tribunal, hence this is a subsequent ground which is being taken by the applicant's counsel, which was not argued before this Tribunal on 05.07.2018, when the impugned order was passed. Therefore, it cannot be said to be the ground which constitutes an apparent error on the face of record and any other ground for which the impugned order can be reviewed by the Tribunal under Order 47 Rule (1).

6. Review application to review the order of the Tribunal are considered by the Tribunal under Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC), which states as under:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

- (a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.]”

From above provisions of the Rule 1 of the Order 47, the scope of review by this Tribunal is limited to the grounds of (i) discovery of any new and important facts or evidence which was not within the applicant's knowledge and which, after exercise of due diligence, was not within his knowledge or could not be produced at the time of consideration of the O.A.; or (ii) some mistake or error apparent on the face of the record; or (iii) for any other sufficient reasons. In the case of Ajit Kumar Rath vs. State of Orissa and Ors – AIR 2000 Supreme Court 85, it was held by Hon'ble Apex Court as under:-

"The provisions extracted above indicate that 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 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 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.

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

7. It is noted that this Tribunal, while exercising the power under the section 22 of the Administrative Tribunals Act to review its order cannot function like an appellate forum as per the judgment of Hon'ble Apex Court in catena of cases. . In the case of **State Of West Bengal And Others v. Kamal Sengupta and another - (2008) 8 SCC 612**, Hon'ble Supreme Court after taking into account almost entire case law on review, has held as under:

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of order 47 rule 1 cpc or section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

8. Hon'ble Supreme Court in **Andhra Pradesh State Road Transport Corporation Vs. Abdul Karim - 2007 (2) Scale page**

129 has held that the review application cannot be lightly entertained. It should be entertained only when there are manifest error which crept up in the judgment resulting serious miscarriage of justice.

9. Further, the Review Application cannot be entertained on the grounds which were already considered in the OA. In the case of Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301, Hon'ble Supreme Court has held as under:

“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications.

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19. 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. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.”

10. In view of the above discussions, the Review Application is not maintainable on the ground that the judgment on which the impugned order was relied, has been overruled by higher forum. Other reasons mentioned in the application are not acceptable which is considering the Review application. Hence the Review Application No. 39/2018 is devoid of merits and is dismissed accordingly. No order as to costs.

MEMBER (J)

MEMBER (A)

Anand...