

(Under Circulation)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 30th 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. 330/00059/2018

In

Original Application No. 330/01309 /2013.

1. Kumod Mathur, aged about 61 years, son of Late H.P. Mathur, resident of , 243, Ellora Enclave, Dayalbagh, Agra-U.P. Retired from the post of Deputy Commissioner, Central Excise, Kanpur

.....Applicant.

VERSUS

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi and others.

.....Respondents

Advocate for the Applicant :- Shri Shyamal Narain
Advocate for the Respondents:-

ORDER

The instant Review Application filed by the applicant in the OA, is directed against the order dated 04.10.2018 passed by this Tribunal in OA No. 1309/2013 (Kumod Mathur Vs. U.O.I. & Ors). The operative paragraph of the impugned order dated 04.10.2018 is as follows:-

“18. In view of the discussions above, we are of the considered opinion that the impugned charge-sheet dated 30.4.2012 is not in accordance with the rule 9 of the CCS (Pension) Rules, 1972 as it has been served on the applicant after his retirement and there is nothing on record to show that prior sanction of Hon'ble President of India has been obtained as observed in this Tribunal's order dated 18.12.2013. Hence, the impugned order dated 30.04.2012 (Annexure A-1 to the OA) is set aside and quashed. The respondents are directed to release the retirement benefits of the applicant as per the rules within two months from the date of receipt of a certified copy of this order. In case of failure to release the retirement benefits to the applicant within the time as specified above, the applicant will also be entitled for the

interest at the rate of 10% per annum from the date of his retirement and the said interest shall be recovered from the employee, if found to be responsible for delay in release of the retirement benefits to the applicant as per law. It is made clear that the respondents will have liberty to complete the inquiry about the height of the applicant in case the existing medical report / records regarding his height in the service record are not acceptable to the respondents and to initiate action against the applicant as per law in case his height is not as per the standard specified by the Government for the post in which the applicant was initially appointed.”

2. Main grounds mentioned in the Review Application to review the order dated 04.10.2018 of this Tribunal are as under: -
 - a. The judgment dated 04.10.2018 in so far as it purports to grant liberty to the respondents to complete the inquiry about the height of the applicant in case the existing medical report / records is without jurisdiction and beyond scope of the Original Application.
 - b. In granting liberty to the respondents, the Tribunal has committed a serious error apparent on the face of record as the dispute in the OA was confined to the legality and validity of the impugned charge memo for alleged misconduct.
 - c. The Tribunal had travelled beyond the scope of the Original Application while granting the liberty to the respondents at this belated stage to initiate action against the applicant, in case his height is not as per the standard specified by the Government.
 - d. The liberty granted by the Tribunal in the order is wholly unwarranted and uncalled for as it would cause serious prejudice to the applicant and unfairly and unjustly confer upon the respondents the authority and legitimacy to initiate belated action against the applicant which in turn would have the deleterious effect of keeping him embroiled in convoluted proceedings for years together.

3. The review of the order of this Tribunal is done under the section 22(3)(f) of the Administrative Tribunals Act, 1985 read with provisions of the rule 1 Order 47 of the CPC. The rule 1 of Order 47 of the CPC states as under : -

“1. Application for review of judgment – (1) Any person considering himself aggrieved –

(a). by a decree or order from which an appeal is allowed, but from which 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 judgment to the Court which passed the decree or made the order.”

4. It is noted that the scope of reviewing the order of this Tribunal is limited to the grounds as mentioned in the Order 47 Rule 1 of the CPC. A review application can be entertained on the ground of error apparent on the face of record or new facts / matter which was not known at the time of hearing of the O.A. It is noted that in the case of **State of West Bengal And Others v. Kamal Sengupta and another reported in (2008) 8 SCC 612**, Hon’ble Supreme Court has laid down following factors to be kept in mind for review:-

“(i). *The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.*

(ii). *The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.*

(iii). *“that any other sufficient reasons” 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 the record.*

(v). *An erroneous decision cannot be corrected under review.*

(vi). *An order cannot be reviewed on the basis of subsequent decision / judgment of coordinate Larger bench or a superior Court.*

(vii). *The adjudication has to be with regard to material which were available at the time of initial decision subsequent event / developments are not error apparent.*

(viii). Mere discovery of new / important matter or evidence is not sufficient ground for review. The party also has 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 earlier before the Tribunal.”

5. The Hon’ble Apex Court in the case of **Rajendra Kumar and others Vs. Rambhai and others – (2007) 15 SCC 513** has dealt with the question of review and its maintainability and has held as under: -

“6. The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgement/order cannot be disturbed.

6. In the case of **Inder Chand Jain (Dead) through Lrs, Vs. Motilal (dead) through Lrs. Reported in (2009) 14 SCC 663** the Hon’ble Apex Court held as under:-

“..10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held :

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and 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 an appeal in disguise.”

7. We have to examine the grounds mentioned in the Review Application in the light of the legal provisions and principles as discussed above. The main ground advanced in this Review Application is that the liberty granted to the respondents to complete the inquiry about the height of the applicant in the impugned order dated 04.10.2018 is without jurisdiction and beyond the scope of the Original Application. We consider this

ground to be an interpretation of law, which cannot be termed as an error apparent on the face of the record and hence this ground cannot be considered as a legally valid ground to review the order dated 04.10.2018 as per law.

8. Further, it is seen from the para 18 of the impugned order that the chargesheet dated 30.04.2012 was set aside and quashed for the reason that prior sanction of Hon'ble President of India under the rule 9 of the CCS (Pension) Rules, 1972 was not taken by the respondents in view of the factual position of the case. We are of the opinion that under the provisions of the CCS (Pension) Rules, 1972, the authorities are free to initiate action / proceedings against a pensioner after following due procedure as specified under the said Rules. Under the CCS (Pension) Rules, 1972, the competent authority has such power. The liberty given to the respondents in the impugned order dated 04.10.2018 is in accordance with such provisions of the CCS (Pension) Rules, 1972 which remain valid irrespective of the findings recorded in the impugned order dated 04.10.2018 of this Tribunal.

9. We have also carefully considered other grounds mentioned in the Review Application. These grounds cannot be considered in this Review Application since none of these can be termed as the grounds as per the rule 1 Order 47 of the CPC, which is applicable for review. The applicant has to seek appropriate remedy as per law if he is aggrieved by the order dated 04.10.2018, but the review against the said order on the grounds mentioned in the Review Application are not permissible in view of the provisions of law and the legal principles laid down by the Hon'ble Apex Court in the case laws, as discussed in this order. Therefore, the Review Application No. 59/2018 is devoid of merit and accordingly, it is dismissed.

10. The Registry is directed to send a certified copy of this order to the learned counsels for parties.

MEMBER (J)

MEMBER (A)

Anand...