

Open Court

Central Administrative Tribunal, Allahabad Bench, Allahabad

**Review Application No. 330/00019/2017 in
Original Application No.1089/2007**

This the 1st day of November, 2018

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Union of India through Head Quarters, Chief Engineer, Air Force Station, Allahabad.

Reviewer/respondent No.1 in Original Application

By Advocate: Sri Himanshu Singh

Versus

1. Amit Chauhan son of Sri N.P.S. Chauhan, resident of B-302, Trans Yamuna Colony, District- Agra.

Respondents/Applicant in Original Application

By Advocate: Sri Saran Kumar

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

One Amit Chauhan opposite party in this review application had earlier filed an Original Application (O.A.) No. 1089/2007 (Amit Chauhan Vs. Union of India and others) for setting aside the order dated 7.4.2005, for appointment of respondent No. 2 (In O.A.), Sri Ram Babu.

2. This O.A. was decided by the Division Bench of this Tribunal consisting of Hon'ble Dr. Murtaza Ali, Member (J) and Hon'ble Mr. O.P.S. Malik, Member (A) on 2nd March, 2017, whereby the O.A. was allowed and impugned order dated 7.4.2005, for appointment of respondent No. 2, was quashed. The operative portion of the aforesaid judgment is reproduced below:-

“11. Accordingly, O.A. is allowed and the impugned order dated 7.4.2005 and the appointment letter issued to respondent No.2 are quashed. The respondent No.1 is directed to consider to issue formal appointment letter to the applicant within a period of 1 month from the date of receipt of this order if he is otherwise eligible while considering that no appointment of respondent No.2 was ever made. The applicant shall be deemed to be in service from the date of joining of respondent No.2 for all purposes

but he shall not get any pay or allowances for the period he has not actually worked. No order as to costs.”

3. This judgment is under challenge in this review application on behalf of respondent No.1. It is pertinent to point out that respondent No.2 of O.A. No. 1089/2007, Sri Ram Babu, had also preferred a review application No. 18/2017 before the bench consisting of Hon’ble Dr. Murtaza Ali, Member (J) and Hon’ble Mr. Gokul Chandra Pati, Member (A). This Review Application was dismissed vide order dated 1st December, 2017.

4. The present review application has been moved on behalf of respondent No.1.

5. Heard Sri Himanshu Singh, advocate for reviewer/respondent No.1 and Sri Saran Kumar, Advocate, Opposite party/applicant.

6. The Review Application is considered under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with the order 47 Rule 1 of CPC. Under Rule 1 of the Order 47 of CPC, the scope of review of the order passed by the Tribunal is permitted on the ground of (i) discovery of any new and important facts or evidence which was not within the applicant’s knowledge and which 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. Thus the scope of review of order by this Tribunal is limited under the Order 47 Rule 1 of the CPC as explained above.

7. The position of law in this regard has been laid down in the judgment of Hon’ble Supreme Court in the case of **Kamlesh Verma Vs. Mayawati and others reported in 2013 AIR SC 3301** with the following observations:-

“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.

Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute.

20.1 When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;**
- (ii) Mistake or error apparent on the face of the record;**
- (iii) Any other sufficient reasons.**

The words "any other sufficient reason" have been interpreted in **Chhajju Ram Vs. Neki** and approved by this Court in **Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulose Anthanasious** to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India Vs. Sandur Manganese & Iron Ores Ltd. JT 2013 8 SC 275.**"

8. As observed by the Hon'ble Apex Court in the case of **Meera Bhanja vs. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170**, that review proceedings cannot be considered by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC and review petition is required to be entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has also been pleased to observe that while deciding the review, the matter cannot be re-apprised and only typographical error apparent on record can be reviewed.

9. In another case of **Parson Devi and Others Vs. Sumitri Devi and Others reported in (1997) 8 SCC -715**, the Hon'ble Apex Court has been pleased to observe as under:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

10. The Hon'ble Apex Court in the case of **Inder Chand Jain(Dead)**

Through Lrs, Vs. Motilal (Dead) Through Lrs. Reported in (2009)

14 SCC 663 has been pleased to observe as under:-

10. 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.

11. Review is not appeal in disguise. In **Lily Thomas Vs. Union of**

India the Hon'ble Apex Court held:-

"56. 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."

12. Coming back to the facts of present review application, it is pertinent to point out that counsel for reviewer/respondent No. 1 Sri Himanshu Singh has merely repeated the arguments made in his counter reply. He has submitted that the advertisement published in Hindi was different from the advertisement published in English. Meaning by, both advertisements are at variance. That may or may not be the case but the fact is that this argument should have been raised before the earlier bench of the Tribunal who had decided the O.A. The bench of this Tribunal considered the arguments of applicant in great detail. The relevant portion of the judgment of this Tribunal enshrined in paragraph 8 of the judgment which is reproduced below:-

“8. Learned counsel for the applicant challenged the rejection of his representation and legality of appointment of respondent No. 2 on the post of L.D.C. on the following main grounds –

(i) Firstly, he has drawn our attention to the following conditions mentioned in the advertisement (Annexure A-2) –

2- ;
, y- Mh I h %uEu Jslh fyid% vlon d{lk 10 ikl gsk pkf,
rFk I lk eafghh o vaxt Vd.k ea xfr de ls de 30 'kn ifr fefuV
gsk vlo'; d g in I {; k c vlo & vlon d{lk vlo ikl gsk pkf, A

13- vlonu i= doy I lkj.k Mkd }jlk gh eW; gsk

14- mElnokj fn;sgsik: i dsvu lk gh vlonu djafdl h vU; ik: i
ij Htsx;svlonu i= eW; ugagksA

It has been pointed out that the respondent No. 2 knew only English Typing as he had himself mentioned in his application form (Annexure No.3 of CA) and thus the candidature of respondent No.2 was liable to be rejected as he did not possess the essential qualification of Hindi Typing. In the counter reply filed on behalf of respondent Nos. 1 and 2, this fact has not been denied.

(ii) Secondly, it has been argued that the applications were invited on the prescribed format through ordinary Post

only and it was clearly mentioned in the Advertisement that any application on different format shall not be accepted.

Our attention has been drawn to the application form of respondent No.2 (Annexure 3 to C.A.) and the prescribed format in the advertisement (Annexure A-2). The format mentioned in the advertisement is being reproduced below –

1- 2- 3- 4-	lkn dk ule vknndk dk ule firk dk ule tkr	dekmj fuelk vflk; rk ,; j Qd ZLVsku egkjkt ij] Xolfy; j 4 1/2- i 1/2
5-	tle frffk volsk 'knse	
6-	LFNbZirk	
7-	lk= 0; ogkj dk i rk	
8-	'kld ; lk; rk	
9-	jkt xlj dk; lk; dk ule] i th; u dekl] fnukd	ulv %& eS?Wkr djrk gSfd ej; }jk fn; sx; s l Hh mijDr fooj.k i ukr% IR; gA ; fn mijDr fooj.k eadkZ vLR; rk ik; h tkr gSrsejk i Hkuk i= fuJLr dj fn;k tk; sbl easer; sdkZ vki fRr ughgkxH
		vkond dsgLrk(kj

It is evident that in the format published in the advertisement, there are 9 columns but in the application filed by the respondent No.2 (Annexure No.3 of CA), there are 11 columns and the applicant added 2 more columns on his own stating therein his experience in English typing and the date of appointment in MES/category. There is also a declaration in the original format declaring the contents of application as true but such declaration is not found place in the application form submitted by respondent No.2. Since the respondent No.2 modified the format and submitted his application which is in contravention of condition No. 14 of the advertisement, it has been contended that the application was liable to be rejected on this ground also.

(iii) Thirdly, it has been contended that the departmental candidates were not allowed to appear in the said examination and the posts mentioned in the

advertisement were to be filled up through direct recruitment from open market only. The respondents have failed to show any rule under which the application of respondent No.2 was entertained as a departmental candidate. They have also failed to show that any notice was issued to the departmental candidates inviting their applications for the said post. Surprisingly, only the application of respondent No. 2 was entertained on the modified format as the departmental candidate who even did not possess the essential qualification of Hindi typing, and was finally selected.

(iv) Fourthly, it has been submitted that no result of final selection of L.D.C was published in any newspaper and in view of Article 49 of C.S.R Rules and reply dated 14.1.2012 (Annexure to the Supplementary Affidavit dated 18.2.2013) given by the respondents under R.T.I, it is evident that the form of medical examination and police verification are forwarded to the selected candidates only along with the appointment letter and no medical examination is required under C.S.R. 49 for waiting list or reserved panel candidates. The applicant has filed a letter dated 5.12.2003 (Annexure No.3) requiring him to submit police verification form as well as medical certificate. It has been admitted by the respondent No.1 in its reply under R.T.I Act that police verification form and medical certificate are required from selected candidates only. There is force in the arguments advanced on behalf of applicant that being selected candidate, the applicant was required to furnish police verification form and medical certificate but later-on his name was kept in reserved panel and respondent No.2 was issued appointment letter which was not in accordance with law.”

13. The documents annexed with the review application cannot be considered now when the same were not produced before the earlier bench of this Tribunal. It is pertinent to point out that the earlier bench of this Tribunal took cognizance of several tell-tale sign which indicated certain carelessness in observing rules of selection. Hon'ble Supreme Court in the case of **State of U.P. Vs. Vijay Kumar Mishra** reported in

(2017) 11 Supreme Court Cases 521 has observed that “**when a set of eligibility qualification are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, prescribed under the rules or stated in the advertisement, is not eligible to be considered for such post.”**

14. Earlier bench held that advertisement prescribed the qualification of proficiency in bilingual typing i.e. in Hindi and English. In addition to that certain additional requirements were also prescribed. Earlier bench of the Tribunal held that several qualifications were ignored by the respondents while conducting the selection. We do not consider that it is necessary to give our opinion on this point but the fact remains that nothing escaped the attention of the earlier bench of this Tribunal. It is evident that there is no error apparent on the face of record.

15. In view of the above, Review application is liable to be dismissed and hence dismissed being devoid of any merit.

(Mohd. Jamshed)
Member (A)

(Justice Bharat Bhushan)
Member (J)

HLS/-