

Central Administrative Tribunal, Allahabad Bench, Allahabad
Review Application No. 330/00003/2018
in O.A. No. 330/00397/2012
This the 14th day of February, 2018

Hon'ble Mr. Justice Dinesh Gupta , Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Vivek Balwant Rao Umap aged about 40 years son of late Balwant Rao Ramkrishna Umap resident of Type V/01, Sangam Vihar, Cariappa Road, New Cantt, Allahabad presently posted as Joint Controller of Defence Accounts (Pensions) Draupadi Ghat, Allahabad 211001 (U.P.)

Applicant

By Advocate : xxxxx

Versus

1. Union of India through the Secretary, Ministry of Defence (Finance) Establishment I Section, New Delhi.
2. The Controller General of Defence Accounts, Ulan Batar Road, Palam , Delhi Cantt-110010.
3. The Principal Controller of Defence Accounts (P)), Draupadi Ghat, Allahabad Cantt, Allahabad.

Respondents

By Advocate: Sri L.P.Tiwari

ORDER (Under Circulation)

HON'BLE MR. JUSTICE DINES GUPTA, MEMBER (J)

The present Review Application is preferred by the respondents of O.A. No. 397/2012 u/s 22(3)(f) of AT Act, 1985 read with rule 17 of CAT (Procedure) Rules, 1987 for reviewing the order dated 16.11.2017 passed by this Tribunal in O.A. No. 397/2012 by which the Tribunal allowed the O.A. and quashed the impugned order dated 30.9.2011 and remitted back the matter to the respondents to consider the case of the applicant by holding the Review DPC for promotion to the post of JAG and thereafter for NFSG, keeping in view that his juniors have been promoted and he has also undergone penalty imposed upon him, and grant him all consequential benefits as admissible to him in accordance with law and rules on the subject. The decision so taken should be communicated to the applicant within a period of three months from the date of receipt of certified copy of this order.

2. The respondents of O.A. No. 397/2012 filed this Review petition on the ground that all the ACRs of the applicant for the period from 2002-03 to 2005-06 were average/Good. Thus, four out of five ACR grading considered by the DPC held on 19.4.2008 were below benchmark. Thus, it may be seen that the factual position is totally different from the findings of the Hon'ble Tribunal that the applicant's only ACR of 2005-06 was below bench Mark and rest of the other ACRs were upto the bench mark for promotion

to the post of JAG. This Tribunal without having exact position regarding good/average ACR grading for the year 2002-03 to 2005-06 considered by the DPC, pronounced its order dated 16.11.2017 on the basis of a false presumption that the applicant's only ACR of 2005-06 was below bench mark and rest of the ACRs were admittedly upto the bench mark for promotion to the post of JAG.

3. In para 10 of the judgment, this Tribunal has clearly observed that as per Clause 6 of the guidelines issued to the Departmental Promotion Committee, which clearly stipulated that for the period pertaining to the vacancy year 2003-04 and subsequent years, an officer attaining at least 4 bench mark gradings out of 5 ACRs should be assessed as FIT'. It is not disputed that the applicant's only ACR of 2005-06 was below bench mark and rest of the other ACRs were admittedly upto the benchmark for promotion to the post of JAG. The DPC have also not mentioned any reason why the case of the applicant was found as 'unfit' despite the fact that the applicant is having 4 out of 5 ACRs of the relevant period upto the bench mark for promotion to the post of JAG.

4. Respondents themselves in reply to para 4.21 of the O.A. in para 33 of the Counter reply submitted that the applicant was communicated below benchmark grading in the ACR for the period 2005-06 which was reckonable for assessment of the applicant for future DPC. Relevant portion is quoted below:-

i) The averments of the applicant is incorrect and misleading. The DOP&T vide their O.M. dated 13.4.2010 directed that " if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09, which would be reckonable for assessment of his fitness in such future DPCs contain final grading, which are below the bench mark for the next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any , within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs for the other years.

ii) Accordingly, the applicant was communicated below benchmark grading in the ACR for the period 2005-06, which was reckonable for assessment of the applicant for future DPC (i.e. year 2011-12).

5. Accordingly, in view of the above submissions, this Tribunal allowed the O.A. Now, respondents have filed the review application on the new facts that all the ACRs of the applicant for the period from 2002-03 to 2005-06 were average/Good. Thus, four out of five ACR grading considered by the DPC held on 19.4.2008 were below benchmark whereas in the Counter he has submitted that the applicant was communicated below benchmark grading in the ACR for the period 2005-06, which was reckonable for assessment of the applicant for future DPC (i.e. year 2011-12).

6. By means of the present review application, the review applicant wants to re-open the entire issue a fresh. All these issues were considered while passing the order which is under review.

7. Apart from this, along with review application, review applicant has also filed an application for condonation of delay in filing review application along with an affidavit.

8. It is undisputed that the present review application is filed beyond the period of limitation as provided under the AT Act. The order was passed by this Tribunal on 16.11.2017 and copy of the same was received by the Counsel on 17.11.2017 and the present Review Application is preferred by the counsel for applicant on 7.1.2018 which should be filed within 30 days from the date of receipt of certified copy of the order sought to be reviewed.

9. 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."

10. 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.

11. As regards the merit of the case is concerned, the scope of review is very limited. 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.

12. In another case of Parsion 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."

13. 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.

14. 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."

15. After due perusal of records, we are of the considered view that the applicant failed to make out any case for reviewing of the order on merits as well as on limitation. As such the present Review Application is dismissed. No order as to costs.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Member (J)

HLS/-