

Central Administrative Tribunal, Allahabad Bench, Allahabad
Review Application No. 330/00007/2018
in O.A. No. 1032/2013
This the 13th day of February, 2018

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

Ajay Mishra aged about 35 years son of Sri Parmanand Mishra, resident of House no. 22/24, Ganga Ganj, District- Allahabad (U.P.)

Applicant

By Advocate : Shri Dharmendra Tiwari

Versus

1. Union of India, through its Secretary through Ministry of Defence, South Block, DHQPO, New Delhi.
2. The Director General of Ordnance Services, Army Headquarter, Army Bhawan, MGOS Branch (OS-8C) DHQPO, New Delhi.
3. The Commandant, O.D. Fort, Allahabad (U.P).

Respondents

By Advocate: xxx

ORDER (Under Circulation)

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

The present Review Application is preferred by the applicant u/s 22(3)(f) of AT Act, 1985 read with rule 17 of CAT (Procedure) Rules, 1987 for reviewing the order dated 8.12.2017 passed by this Tribunal in O.A. No. 1032/2013 by which the Tribunal dismissed the O.A. on the ground that "Even though the Court has observed that the applicant may be considered against the vacancy of 2001, if the respondents decide to fill the said vacancy and if the same has not yet been filled up. It is clear case of the respondents that vacancy of 2001 was never revived and is no more in existence. Thus, the case of the applicant that he should be considered against the vacancies advertised by the respondents in 2013 is not sustainable in the eyes of law since the respondents have not included the vacancy of 2001 in the subsequent notification advertised for the post of Messenger."

3. The grounds taken in the Review Application is that when the applicant submitted an application for considering his candidature also in pursuance of the order an direction passed by the High Court, the answering respondents rejected the candidature of the applicant saying that in the present advertisement the unfilled vacancy of 2001 was not included. The applicant also enclosed the recruitment rules in which it is clearly mentioned that when the recruitment notification is issued all the

previous unfilled vacancy is to be added to the existing vacancies but the answering respondents have not given any specific reply.

4. In para 11 of the judgment dated 8.12.2017, this Tribunal has specifically dealt with that in compliance of the order of this Tribunal dated 3.5.2016, the respondents have filed a Supplementary Affidavit stating the vacancy position of 2013 notification which clearly shows that no vacancy included in the advertisement issued in 2013 belongs to 2001 and considering this contention of the respondents, this Tribunal dismissed the O.A. on the ground that it was clear case of the respondents that vacancy of 2001 was never revived and is no more in existence. Thus, the case of the applicant that he should be considered against the vacancies advertised by the respondents in 2013 is not sustainable in the eyes of law since the respondents have not included the vacancy of 2001 in the subsequent notification advertised for the post of Messenger."

5. 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.

6. 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.

7. 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 8.12.2017 and copy of the same was received by the Counsel on the same date and the present Review Application is preferred by the counsel for applicant on 31.1.2018 which should be filed within 30 days from the date of receipt of certified copy of the order sought to be reviewed.

8. 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."

9. 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.

10. 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.

11. 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."

12. 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.

13. Review is not appeal in disguised. 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."

14. 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/-