

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

This the 23rd day of March, 2018.

**REVIEW APPLICATION No. 330/00014/2018 in
ORIGINAL APPLICATION NO. 818 OF 2011**

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

1. Ram Charitra Gupta, aged about 65 years, S/o Shri Ganga Ram Gupta, Resident of Mohalla Pipaldanda, P.O. Kunraghat, Gorakhpur-273008, Retired Dy. Post Master (H.S.G.I.), Gorakhpur, H.O. in the District Gorakhpur

.....Applicant in O.A
Respondent in Review

By Advocate: None

V E R S U S

1. Union of India through the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances and Training, New Delhi.
3. The Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110001.
4. Sr. Supdt. Post Offices Gorakhpur Division, Gorakhpur

.....Respondents in O.A.
Applicant in Review Application

Advocate for the Respondents : Shri S. Srivastava

O R D E R (under circulation)

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

The present Review Application has been filed by the applicant (respondent of O.A. No. 818/2011) u/s 22(3)(f) of AT Act, 1985 read with rule 17 of CAT (Procedure) Rules, 1987 for reviewing the order dated

29.8.2017 passed by this Tribunal in O.A. No. 818/2011

by which the Tribunal passed the following orders:-

"7. After careful scrutiny of the order passed by this Tribunal in O.A. No. 857/2008 on 17th November, 2016 by which the Court directed the respondents to reimburse the amount spent by the applicant on his treatment in the SGPGI, Lucknow, I am of the view that this judgment is squarely covers the controversy involved in the present case also and on the same analogy, the applicant is entitled for reimbursement of medical bills spent by him on his treatment as indoor patient in SGPGI.

8. In view of the above, O.A. deserves to be allowed and is accordingly allowed. Impugned order dated 23.5.2011 is hereby quashed. The respondents are directed to sanction and release the admissible amount of medical reimbursement to the applicant and pay the same to the applicant within a period of three months from the date of receipt of certified copy of this order. No order as to costs. "

2. The grounds taken in the Review Application is that the applicant was retired on 31.10.2006 submitted his medical bill in March, 2011 for treatment during the period 14.2.2011 to 17.2.2011 and as per rule the same is not admissible as at Gorakhpur there is no Central Govt. Health Scheme and he is not the subscriber of the CGHS. Therefore, he was informed accordingly, vide letter dated 23.5.2011 and being aggrieved by the said order, the applicant had filed O.A. No. 818/2011. It is also submitted that applicant failed to produce any documents which were satisfactory in nature to prove the medical claim as genuine by the controlling officer, rather there was no any reference by the medical attendant for sending the applicant to SGPGI, Lucknow whereas the

medical college having every facility was available at Gorakhpur itself. The applicant as per his own wishes and fancies received a costly and luxury treatment at SGPGI, Lucknow and the same is not covered under Rule 6(1) and (2) of the Central Service (Medical Attendant) Rules. Accordingly, respondents requested for reviewing the order dated 29.8.2017 passed by this Tribunal in O.A.No.818/2011.

3. While deciding the O.A. No. 818/2011, the Tribunal has considered the case laws relied upon by the counsel for applicant (respondent in review application) passed by the Tribunal in the case of **H.S. Malik and others Vs. Union of India, Laxmi Das T. Vasanu and others Vs. Union of India 2004(2) ATJ 90 and Laxmi Chand Vs. Comptroller and Auditor General of India 2005 (1) ATJ 31 and U.P. Pensioners Welfare Association Vs. Union of India and others 2005 (3) ATJ 460 and O.A. No. 857/2008** and in all these cases the Tribunal observed that ***“retirees of the same govt. cannot be divided into categories for reimbursement of medical facilities”*** . The Tribunal also after careful scrutiny of the order passed by this Tribunal in O.A. No. 857/2008 on 17th November, 2016 in which the Tribunal allowed the O.A. and directed the respondents to reimburse the amount spent by the applicant on his treatment in the SGPGI, Lucknow, found that the case of O.A.

No.818/2017 also squarely covers the controversy involved in O.A. No. 857/2008 and allowed the O.A. and directed the respondents to sanction and release the admissible amount of medical reimbursement to the applicant and pay the same.

4. By means of the present review application, the review applicant wants to re-open the entire issue a fresh which were considered by the Tribunal while passing the order which is under review.

5. 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.

6. 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 29.8.2017 and copy of the same was received by the Counsel on 30.8.2017 but the present Review Application is preferred by the counsel for review applicant on 15.3.2018 which should be filed within 30 days from the date of receipt of certified copy of the order sought to be reviewed.

7. 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."

8. 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.

9. So far as ground taken by the review applicant in delay application is concerned, they have failed to demonstrate the delay from 12.10.2017 (when they have received legal opinion) till the date of filing of review application i.e. on 15.3.2018, i.e. more than six months. The review applicant is silent on this period of delay. The law of limitation is very strict. Until or unless, there is no bonafide ground for condoning the delay, delay cannot be condoned in mechanical manner. As such, review applicant has utterly failed to give any sufficient ground for condoning the delay and delay is material. Accordingly, delay condonation application is rejected.

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 overstepped 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. In view of the above discussion, Court is of the considered view that applicant has not taken any new ground in the review application. The grounds which they have taken in the review application has already been taken by them in the counter reply which has already been dealt by this Court.

15. In view of the above discussion, the court is of the considered view that the review applicant has failed to make out any case for reviewing of the order dated 29.8.2017 passed in O.A. No. 818/2011 on merits as well as on limitation. As such the present Review Application is dismissed. No order as to costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-

