

ORAL

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 4TH Day of April, 2018)

Hon'ble Mr. Justice Dinesh Gupta, Member (Judicial)

Review Application No. 330/00001/2016
(Filed on behalf of the Respondents)

In

Original Application No. 330/454/2008

Badri Prasad **Applicant**

Versus

Union of India & others **Respondents**

Counsel for the Review Applicants : Shri R.K. Srivastava

Counsel for the Review Respondent : Shri Ashish Srivastava

O R D E R

Present Review Application has been filed by the review applicants (Union of India) for review of the order dated 26th August, 2015. The ground taken by the review applicants for reviewing the order is that during the Departmental Inquiry full opportunity was given to the review respondent (applicant in O.A.) to defend his case and after examining the

explanation/written submission the Competent Authority passed the order of penalty for recovery of loss of Government Money from the review respondent.

2. He, further, submitted that in support of the impugned order, review applicants have relied upon the judgment passed by the Apex Court in the case of Regional Manager, UPSRTC vs. Hoti Lal (Civil Appeal No.5984 of 2000) which is mentioned in Para - 4 of the order dated 26.08.2015 but no reasons were recorded by the Tribunal for dissatisfying by the judgment of Apex Court.

3. Counsel for the review respondent submitted that the Tribunal has passed the impugned order after satisfying himself on the point of fact as well as on the point of law and there is no scope for review and the review application is liable to be dismissed. He, further, stated that while passing the impugned order dated 26.08.2015, the court has not granted any interest to the review respondent on the amount which is illegally deducted from the pay and allowances of the

applicant and after passing of the impugned order 26.08.2015 the matter was unnecessary delayed for more than two years due to present Review Application and, therefore, the review respondent is entitled for grant of interest on the amount which was illegally recovered from him.

4. Heard Shri R.K. Srivastava, counsel for the review applicants and Shri Ashish Srivastava, counsel for the review respondent.

5. The Court is unable to accept the contentions raised by counsel for the review applicants. In Para-4 of the impugned order dated 26.08.2015, the Tribunal has mentioned that respondents have referred to the observations of Hon'ble Apex Court, in the case of Regional Manager UPSRT vs. Hoti Lal (Civil Appeal No.5984 of 2000) and further has also mentioned the observation of the Apex Court. Since, the Court has taken into consideration the judgment and the observation of the Apex Court in the case of Hoti Lal (supra), hence, the same ground taken by the review applicants that

the Court has not given any reason for dissatisfying has no substance. The Court has considered the judgment referred and relied upon by the review applicants and passed the impugned order. Hence, the contention of the review applicants has no legal force and the review application is liable to be dismissed on this ground. This Court has passed the aforesaid Order after considering the facts and circumstances of the case and this court do not find any error apparent on the face of record. While considering the scope of review, Hon'ble Supreme Court in the case of ***Parson Devi and Others vs. Sumitri Devi and Others*** [1997 (8) SCC 715], held that there is a difference between an erroneous decision and an error apparent on the face of the record. The relevant part of said judgment reads as under:-

"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 of 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". 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 latter only can be corrected by

exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

6. **In Ajit Kumar Rath Vs. State of Orissa (1999 (9) SCC 596)**

also, the Apex Court held that power of review vested in the Tribunal is not for the purpose of re-hearing the case. The relevant part of the said judgment reads as under:-

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently in the rule.

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

[Emphasis added]

7. Again in the case of *Gopal Singh Vs. State Cadre Forest Officers' Assn. and Others* [2007 (9) SCC 369], the Apex Court held that the Tribunal/court cannot sit as an appellate authority on its own orders. The relevant observations made in that judgment are extracted below:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

8. Since, no other ground has been raised by the review-applicants accept the judgment of the Apex Court rendered in the case of Hoti Lal (supra) and the Review Applicants are only trying to re-argue the OA., therefore, this review application is dismissed. There shall be no order as to costs.

9. So far as the contention of review-respondent regarding award of interest is concerned, this is a separate cause of action and the review-respondent is at liberty to take legal recourse for redressal of his grievance before Competent Court.

(Justice Dinesh Gupta)
Member-Judicial

Sushil