

Central Administrative Tribunal
Principal Bench

RA No. 187/2015
in
OA No. 4394/2014

New Delhi, this the 16th day of September, 2016

Hon'ble Dr. B. K. Sinha, Member (A)

B.P. Mahaur, Age – 73 years,
s/o late Sh. Ved Ram Mahaur,
Retired from the post of Assistant Commissioner,
While working in Govt. of NCT of Delhi,
R/o C-7/202, Sector-8, Rohini,
Delhi- 85.Review Applicant

Versus

1. Union of India through
The Secretary,
Govt. of India, Ministry of Home Affairs,
North Block, New Delhi.
2. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, Players Building,
IP Estate, New Delhi.
3. The Principal Secretary,
Land & Building Department,
Govt. of NCT of Delhi,
Vikas Bhawan, New Delhi-2.Respondents

ORDER (By Circulation)

This is an Application filed under Rule 17 of CAT (Procedure) Rules, 1987 seeking review of the Tribunal's order dated 26.04.2016 vide which OA No.4394/2014 came to be dismissed. For the sake clarity, the relevant portion of the order under review is being extracted hereunder:-

“11. In view of the afore discussion, it emerges plainly that the applicant is under order of punishment under the aforesaid proceedings and as such, his claim for restoration of his pension and release of leave encashment, including gratuity is misplaced. The OA is hence bereft of merit and is

accordingly dismissed as such. No order as to costs.”

2. The only ground raised by the review applicant is that the Tribunal has erred in dismissing the OA with the observation that the review applicant was under order of punishment whereas this Tribunal vide order dated 22.07.2014 passed in OA No.4289/2012 had quashed all the penalty orders but the only penalty i.e. 20% cut in pension for five years was in operation. The review applicant further averred that at the time of filing of the OA, no penalty of cut in pension by 100% was in operation as the said penalty order came to be imposed only during the pendency of the OA vide order dated 18/19.01.2016. Hence, till 18/19.01.2016, the review applicant was entitled for provisional pension in terms of Rule 69 of the CCS (Pension) Rules.

3. It is seen that the ground taken by the review applicant has already been dealt with in the order under review and, therefore, the applicant cannot be allowed to re-argue the OA in the garb of review application as per the law laid down by the Hon’ble Supreme Court in the case of ***State of West Bengal and Others versus Kamal Sengupta and Another*** [2008 (8) SCC 612].

4. I also take note of the decision of the Hon’ble Supreme Court in a landmark decision in ***Kamlesh Verma versus Mayawati & Ors.***[2013 (8) SCC 320] whereby certain conditions have been laid down when the review will not be maintainable, relevant portion whereof is being extracted hereunder for better elucidation:-

“20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

5. The Hon'ble Supreme Court in the afore judgment has laid down parameters of reviewing all the major issues involving review and arrived at the conclusion on the basis thereof. It has been specifically provided that an erroneous order/decision cannot be corrected under the guise of exercise of power of review. It further provides that while considering an application for review, the Tribunal must confine its adjudication to the materials available at the time of initial decision. Thus, there is a difference between review and appeal, and an appeal cannot be allowed in guise of a review.

6. I also take note of the fact that the power of the Tribunal in exercise of its review jurisdiction is confined to such cases only where an error is plain and apparent on the face of the order and

the Tribunal cannot re-examine the issue as held by the Hon'ble Apex Court in ***Subhash versus State of Maharashtra & Another*** [2002 (4) SCT 608 (SC)].

7. From the above it clearly emerges that the applicant cannot be allowed to reargue the case or to use the tool of review application as an appeal. In the instant case, the applicant has attempted both by expanding the scope of the original application in review and by assailing the legality of the decision of this Tribunal, which is not permitted within the scope of review.

8. In view of my above observations, I find no good ground to review the order and resultantly the instant review application stands dismissed in circulation. No costs.

(Dr. B.K. Sinha)
Member (A)

/Ahuja/