

Central Administrative Tribunal
Principal Bench: New Delhi

RA No.190/2017

in

OA No.792/2016

Reserved on: 16.11.2017

Pronounced on:17.11.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Navneet Rai Rishi, Aged about 61 years
s/o late Sh. Yashpal Rishi,
Ex.Sr.Telecom Office Assisant (General)
(Since Retired) from the office of General Manager,
Bhartiya Sanchar Nigam Limited,
Leela Bhawan, Patiala (Punjab)-147001.
Permanent R/o H.No.1120, S.S.T. Nagar,
Patiala (Punjab) – 147001.
Present R/o C/o Sh. Raghupati Lal Sharma,
WZ-106/4, Rajori Garden Extension,
New Delhi. ...Review Applicant
(By Advocate: Sh. V.K. Sharma)

Versus

Union of India through

1. Secretary to the Govt. of India,
Ministry of Communication,
Deptt. Of Telecommunication,
Sanchar Bhawan, 20 Ashok Marg, New Delhi.
2. The Chairman & Managing Director,
B.S.N.L., Corporate Office,
Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi – 110 001.
3. The Director General,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashok Marg,
New Delhi.
4. The Director,
Department of Telecommunication,
Office of Controller of Communication Accounts,
Punjab Telecom Circle, Chandigarh – 160 019.

5. The General Manager,
Telecom Distt., B.S.N.L., Leela Bhawan,
Patiala (Punjab)-147001. ...Review Respondents

(By Advocate: None)

ORDER

The instant Review Application has been filed by the applicant seeking review of the Tribunal's order dated 12.05.2017 vide which OA No.792/2016 was dismissed being devoid of merits. The operative part of the order under review is reproduced hereunder:-

- “5. The judgment of the Hon'ble Supreme Court in **State of Punjab & Ors vs. Rafiq Masih (Whitewasher) & Ors.** [(2015) 4 SCC 334], which, for equity, prohibits, in certain situations, recovery from employees, where payments have mistakenly been made by employer, in excess of their entitlement, is inapplicable to the present case. Further, in **High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh** [(2016) 14 SCC 267] (Annexure R-6), the Hon'ble Supreme Court held that the principle of non-recovery from retired employees would not apply in the case of an employee put on notice at the time of payment that any excess payment would be required to be refunded.
6. In the light of the above, I am of the view that the OA is devoid of merits. The same is, therefore, dismissed. No order as to costs.”

2. The applicant, apart from giving the factual matrix of the case, raised certain grounds e.g. the Tribunal did not consider the decision of Bombay Bench at Nagpur of this Tribunal in **Shri Dinkar Amratrao Wankhede vs. B.S.N.L. & Anr.**[Swamynews-4/2015-65 decided on 14.03.2014]; **B.V. Patil vs. UOI & Ors.**[Swamynews-10/2009-90 decided on 31.03.2008]; decision of Hon'ble Supreme Court in **K.S. Krishnaswamy & Ors. vs. UOI & Ors.** [Civil Appeal No.3174/2006] and many others. The applicant has further

stated that the Tribunal ignored the statutory rules i.e. FR-27 which provides that authority was not competent under the law to reduce initial pay originally fixed even when such pay was based on some data which subsequently turned to be incorrect and even then the Tribunal dismissed the OA. The applicant contended that had the Tribunal taken into considerations the relied on decisions of various Courts/Tribunal as also the statutory rules in right perspective, the fate of the OA would have been different and justice would have been done to him.

3. The respondents have not filed any reply despite notice and nobody appeared on their behalf at the time of hearing.

4. I have heard the learned counsel for the applicant, perused the pleadings of the case and carefully gone through the citations and statutory rules relied upon by the applicant as also the Tribunal's order dated 12.05.2017, which is under review.

5. Perusal of the Tribunal's order dated 12.05.2017 reveals that the Bench, at the time of dismissing the OA, had gone through the rulings cited at the bar and had given thoughtful consideration to the matter. It can be seen from Para 5 of the judgment dated 12.05.2017 that the order recognizes the rulings of the Hon'ble Supreme Court in Rafiq Masih case but also explains that following a subsequent Supreme Court order in case of High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh, why the ratio of Rafiq Masih is inapplicable to the instant

case. Therefore, it cannot be said that the Tribunal has not considered the main ruling cited by the applicant in the OA.

6. As regards consideration of other rulings, we will like to reproduce Para 2 of the order where the order clearly states “I have heard the learned counsel for the parties, perused the pleadings and the rulings cited at the Bar, and given my thoughtful consideration to the matter.” It is clear that the Tribunal had indeed considered all the citings placed before it at the time of hearing. It is not necessary that all the rulings are mentioned in the order. It is sufficient that the rulings have been duly considered while passing an order. Hence, it cannot be said that the Tribunal had ignored the rulings cited by the applicant. If the applicant is not satisfied by the Tribunal’s order in that eventuality he may seek remedy before higher judicial Fora but cannot be permitted to argue the case afresh under the garb of review application. It is well settled principle of law that a review application is not an appeal in disguise or a fresh hearing and for that the proper remedy is to file an appeal before the appropriate forum/superior court. The *sine qua non* for reviewing the order is existence of an error apparent on the face of the record. The applicant has failed to point out any such error but has rather harped on not recording all the citations in the order.

7. In case of **West Bengal & Ors Vs. Kamalsengupta & Anr.** [2008(8) SCC 612], the Hon’ble Supreme Court after having considered the important decisions on the subject and defined

the difference between the review and appeal, has held as follows:-

“35. The principles which can be culled out from the above noted judgments are :

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

8. It is apparent from the above that the scope of the review lies in a very narrow compass. There is a difference between appeal and review. A review is not disguised appeal.

9. Having considered the submissions of the review applicant, and in view of above discussion, I find no merit in the

instant Review application and the same stands dismissed. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/