

Central Administrative Tribunal
Principal Bench: New Delhi

RA No.227/2017

in

OA No.2401/2014

New Delhi, this the 31st day of October, 2017

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

1. Smt. Parmali aged about 70 years,
w/o late Shri Suggan Chand, Ex-Elect.
2. Shri Sanjay Kumar, aged about 36 years,
s/o late Shri Suggan Chand, Ex-Elect.
(Both of the applicants are R/o Vill. Salempur,
Rajputan, PO Roorkee Distt. Haridwar)
Seeking employment assistance in Gp. 'C'
Post on demise of the Govt. employee who had
Died on 20.1.2000 while last posted in GE
Roorkee a Sub Office of CWE Hills Dehradun
Under CE (MES) Bareilly Zone E-in-C's
Branch, AHQ Ministry of Defence,
New Delhi.

...Applicants

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Engineer-in-Chief,
E-in-C's Branch AHQ,
Kashmere House, Rajaji Marg,
New Delhi – 110 011.
3. The Chief Engineer MES
HQ Bareilly Zone,
PIN No.900496 C/o 56 APO.
4. The Commander Works Engineer
(CWE) Hills, Dehradun (U.A.)
5. The Garrison Engineer,
Roorkee Distt. Haridwar (UA)
PIN-247667.

...Respondents

ORDER (By Circulation)

By means of this Review Application, the review applicants have sought review of the Tribunal's order dated 25.09.2017 passed in OA No. 2401/2014 dismissing the OA on merit as well as limitation.

2. In the first instance, the review applicants have taken the ground that MA for joining together filed by them was not allotted any number and, therefore, the same has not been decided. In the second place, the review applicants have submitted the Tribunal has not considered the OM dated 26.07.2012 whereby three years time limit for consideration of compassionate appointments provided vide OM dated 05.05.2003 has been withdrawn in view of the decision of the High Court of Allahabad dated 07.05.2010 passed in Civil Misc. Writ Petition No.13102 of 2010. The applicants have themselves submitted that they came to know about the OM dated 26.07.2012 withdrawing the time limit of three years at a later stage and, hence, they could submit a representation on 10.11.2013 only to consider the case of applicant no.2 for compassionate appointment, which was decided by the respondents vide order dated 22.11.2013. Therefore, there was no intentional delay on part of the applicants in pursuing their claim.

3. I have carefully considered the grounds raised by the review applicants in the RA. Insofar as the first ground of not considering the MA for joining together is concerned, I am of the view that admittedly when it was neither registered nor any number was allotted to the same, question of considering the said MA does not arise.

However, when the OA has finally been decided on merit as well as on limitation, the MA gets merged in the final order passed in the OA.

4. The second ground raised by the review applicants is that they had come to know about withdrawal of three years time period for consideration of compassionate appointments at a later stage and, hence, they filed the representation only on 10.11.2013, which was rejected by the respondents on 22.11.2013. Perusal of records reveals that this ground was not taken by the applicants in the main OA nor the same was advanced at the time of hearing. As has been recorded in the order under review, the applicants had not moved any application for condonation of delay and, therefore, in the absence of such application, there was no option but to take the delay committed by the applicants in moving the OA as a conscious delay and had to be accordingly dealt with. Further, they have taken this ground for the first time in the present RA and, therefore, this is no ground to entertain the review application.

5. I have considered the grounds raised by the review applicants in the RA. It appears that the applicants in the garb of review are trying to re-argue the matter afresh, which is not the scope of review. 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 review applicants have failed to point out any such error. However, if the applicants are not satisfied with the order passed by the Tribunal, they may seek remedy before the appropriate higher fora.

6. 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.”

7. It is apparent from the above that the scope of the review is in very narrow compass. It has already been covered that there is a difference between appeal and review. A review is not disguised appeal.

8. Having considered the submissions of the review applicants, and in view of above discussion, I find no merit in the instant Review application and the same stands dismissed by circulation. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/