Central Administrative Tribunal
Principal Bench

RA No. 19/2016
in
OA No. 3873/2012

New Delhi, this 15th day of February, 2016

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

Anil Kumar Mahato -Review Applicant

Versus

DMRC & Ors. -Respondent

ORDER (by circulation)

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

The instant Review Application has been filed under Section 22(3)(f) of the Administrative Tribunals Act, 1987 seeking review of the Tribunal's order dated 21.12.2015 passed in OA No. 3873/2012.

2. The basic grievance of the applicant was that he, being an employee of the respondent organization, applied for the post of Assistant Manager (Operation) against advertisement issued for limited departmental competitive examination. The RTI enquiry revealed that he had secured very high marks in written test while low in interview. Though the applicant had alleged mala fide, but his case was disallowed by the Tribunal finding the said allegation and other grounds raised unsubstantiated.

3. In the instant review application the applicant has taken the ground that the speaking order of the Managing

Director did not properly appreciate the factum of one of the Members of the Interview Board going out to attend to a telephone call for 2-3 minutes during the interview which tantamount to violation of set rules of the interview; the impugned order has failed to appreciate the fact that respondent failed to give separate zone of consideration to SC/ST candidates while deciding the seniority marks.

4. Before we examine the issue as such, we would like to go into the basic issue as to what is the scope of review. We take cognizance of the fact that the Tribunal's power under Section 23(3)(f) of the A.T. Act, 1985 is akin to that of statutorily and judicially recognized powers of the Civil Courts. This is not a carte blanche authorization given to the courts to re-visit and re-hear cases. It is subject to Order 47 Rule 1 implying that the Tribunal can only review its order/decision on discovery of new and important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence or the same was not within its knowledge or even the same could not be produced before the Tribunal earlier or the order sought to be reviewed suffers from some mistakes and errors apparent on the face of record or there exists some other reasons which, in the opinion of the Tribunal, are sufficient to review its earlier decision.

5. In a landmark decision in **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, 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."*

6. In another landmark decision in case of ***Kamlesh Verma versus Mayawati & Ors.***[2013 (8) SCC 320], the

Hon'ble Supreme Court has laid down conditions 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."*

7. We find that all the points raised by the review applicant in the instant review application have already been discussed in depth in the order under review. We are of the firm opinion that re-appreciation of evidence is fully within the domain of the appellate court and it cannot be advanced in review petition. We also find no error apparent on face of the record which may warrant review of the Tribunal's order dated 21.12.2015.

8. Finding no merit in the instant Review Application, we dismiss the same without there being any order as to costs.

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

(A.K. Bhardwaj)
Chairman

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