

Central Administrative Tribunal
Principal Bench: New Delhi

RA No.242/2015
in
OA No. 4330/2013

New Delhi, this the 23rd day of September, 2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B. K. Sinha, Member (A)

Kishor Kumar Makwana,
S/o late Shri Dhiraj Lal,
Economic Officer,
Planning Commission,
Room No.540, Yojna Bhawan,
Sansad Marg,
New Delhi – 110 001.

...Review Applicant

Versus

Union of India through
The Member-Secretary,
Planning Commission,
Yojna Bhawan, Sansad Marg,
New Delhi – 10 001.

...Respondent

ORDER (By Circulation)

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

The instant review application has been filed by the applicant under Section 22(f) of the Administrative Tribunals Act, 1985 read with Rule 27 of CAT (Procedure) Rules, 1987 seeking review of the Tribunal's order dated 25.08.2015 passed in OA No.4330/2013.

2. We have carefully gone through the review application and found that the applicant has only repeated the grounds and arguments as had been advanced by him in the Original Application which amounts to re-visit or re-hear the case as the applicant has neither raised any new grounds nor pointed out

any error apparent on the face of the order. It is also pertinent to mention here that the Tribunal while disposing of the Original Application considered each and every point raised by the rival parties in its order under review. The relevant part of the order reads thus:-

"10. Insofar as the second issue is concerned, a distinction has to be drawn between the reversion of an employee on regular promotion and withdrawal of ad hoc promotion. In case of regular promotion, the reversion shall take effect from the date of the order of reversion. In other words, whatever has been earned by an employee by way of increments shall remain with him till the date of effect of the order. On the other hand, ad hoc promotion is only a stop-gap arrangement till such time a regular incumbent is not found for the post. Therefore, withdrawal of ad hoc promotion shall take effect from the date of ad hoc promotion. The issue is concluded accordingly.

11. In conclusion we can only say that while we have laid down the principles, the matter for detailed calculation is best left to the accountant. The court cannot be expected to enter into the domain of accountancy and to make calculations itself. Therefore, the respondents are directed to apply the above principles and to make such calculation as necessary as per the ratio laid down in this order, within a period of three months from the date of order."

3. At the outset, 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.

4. 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.”

5. 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.”

6. We find that in the OA we have considered the arguments of the parties at some length and have framed the following two issues, which are extracted hereunder:-

- (i) *Whether the ACP granted to the applicant in the scale of Rs.8000-13500 vide order dated 13.12.2002 which has not been withdrawn, obviate the effect of revision of the applicant to the post of Economic Officer in the Project Appraisal Division w.e.f. 30.06.2010?*
- (ii) *What is the effect of the reversion order of the applicant in terms of fixation of his salary?*

7. We have also discussed these issues in detail taking into account all the grounds which have now been raised in the instant review application.

8. In view of what has been discussed above, we are of the firm view that the grounds, which have been urged cannot be grounds for review of the order. We are also of the opinion that under the garb of review, a party cannot be allowed to reargue the matter on merit raising new points, which may be permissible before the appellate forum, but not in review as enunciated by the Apex Court in ***Kamlesh Verma versus Mayawati & Ors.*** (supra).

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

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

(Syed Rafat Alam)
Chairman

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