

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.244/2017 and MA No.4406/2017 In
O.A. No.4276/2016**

New Delhi this the 1st day of December, 2017

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Delhi Police,
Through its Commissioner,
Police Headquarters,
ITO, New Delhi.

...Review Applicant in RA/Respondent
in OA

Versus

Mukesh Chand Yadav

...Respondent in RA/Applicant in OA

ORDER BY CIRCULATION

MA No.4406/2017

This MA has been by the Review Applicant, i.e. respondent claiming that as there is delay of only 10 days so the same may be condoned and MA may be allowed.

2. For the reasons mentioned in the MA, the same is allowed.

RA No.244/2017

3. The facts, in brief, are that while deciding the Original Application (OA) bearing No.4276/2016, this Tribunal considered all the issues raised by the Review Applicant, i.e., Delhi Police and disposed of the same on merits on 22.08.2017 (Annexure-RA-1). The operative part of the said order reads as under:-

“5. Nevertheless, this is also a fact that payment after dismissal should have been done as expeditiously as possible, especially, with regard to the GPF, which could have easily been calculated and paid within a period of six months. Similarly, the leave encashment entails a verification of the leave record maintained during the career of the employee. The learned counsel for

applicant is not able to assist and inform in how many different locations/places the applicant was posted. He has also informed that one of the causes for initiation of the disciplinary proceedings against him was his suffering from schizophrenia and dementia, which resulted in his absence from duty. In view of the same, a six months period of calculation of his leave encashment amount would have been sufficient for the authorities to settle the same, hence, excluding the period of six months from the date of his dismissal, the remaining period before the payment of his leave encashment and GPF will be paid with an interest @ 9% on the amounts due.

6. Accordingly, the OA stands disposed of. The interest amount due shall be paid within a period of 90 days from the date of receipt of a certified copy of this order. No costs”.

4. Now the Review Applicant has filed the present RA bearing No.244/2017 for reviewing the indicated order, mainly on the grounds that Tribunal has erred in not appreciating the fact that under Rule 9(1) of leave encashment rule, respondent (applicant in OA) is not to be paid any amount on account of leave encashment since he was a dismissed employee. This was considered by this Tribunal while deciding the main OA. Thus review applicant, i.e. Delhi Police cannot be permitted to re-agitate all the points again.

5. Further, I may mention that the question raised by the review applicant is squarely covered by the decision of the Hon'ble Supreme Court in **SLP (Civil) No.1427/2009** in ***State of Jharkhand and Others vs. Jitendra Kumar Srivastava and Another*** decided on 14.08.2013,. In Paragraph 9 of the judgment, the Hon'ble Supreme Court held as under:

“(i) The state Government has the power to withhold or withdraw pension or any part of it when the petitioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings".

Sub-rule (iii) is fully applicable to the case of respondent.

6. It is now well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parson Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.***

7. An identical question came up to be decided by Hon'ble Apex Court in case **State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612**. Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

- “(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. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicant has not pointed out any error

apparent on the face of record warranting a review of the order dated 22.08.2017 (Annexure-RA-1). Moreover, the issues now sought to be urged, were subject matter of the OA and have already been adjudicated upon by the Tribunal.

9. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground is made out to entertain the present Review Application, which is accordingly dismissed.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh