

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.36/2016

with

M.A.No.531/2016

in

O.A.No.4452/2013

Order Reserved on: 08.03.2016

Order pronounced on 10.03.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Shri P. K. Basu, Member (A)

1. Chairman

Central Pollution Control Board

Parivesh Bhawan

East Arjun Nagar

Shahdara

Delhi – 110003. Applicant

(By Advocate: Ms. Charu Ambwani)

Versus

1. Harihar Prasad Das

Ex.-Senior Law Officer

Central Pollution Control Board

Resident of E-186 Bathla Apartment

43 IP Extension

Patparganj

Delhi 110 092.

2. The Secretary

Ministry of Environment and Forest

Paryavaran Bhawan, CGO Complex

Lodhi Road

New Delhi – 110 003. ..

Respondents

[Respondent No.1 in person (original applicant)]

ORDER**By V. Ajay Kumar, Member (J):**

The applicant, a retired Senior Law Officer of the 1st Respondent, Central Pollution Control Board (CPCB), filed the OA seeking a direction to the respondents to grant him the 2nd Financial Up-gradation under MACP Scheme w.e.f. 01.09.2008, instead of 01.04.2011 as granted to him vide Office Order dated 08.03.2013, after his representation in this regard was rejected.

2. The 1st Respondent-CPCB and the 2nd Respondent, i.e., Ministry of Environment and Forests filed separate counters, denying the OA averments. However, since there was no representation on behalf of the 1st Respondent-CPCB, on the date of final hearing of the OA, orders were reserved after hearing the applicant who is appearing in person and the counsel for Respondent No.2 and finally orders were pronounced by allowing the OA on 20.01.2015 after considering the entire pleadings on record, including the counter filed on behalf of Respondent No.1-CPCB.
3. Since the said orders in OA No.4452/2013 were not complied with, the applicant filed CP No.323/2015.
4. The 1st Respondent in the OA filed MA No.1437/2015 in OA No.4452/2015 on 26.02.2015 seeking to recall the order dated 20.01.2015 in OA No.4452/2013 by submitting that the OA was disposed of ex-parte. However, when the said MA was listed on

06.05.2015 and since there was no representation for the Miscellaneous Applicants, the same was dismissed for default. Thereafter, the 1st Respondent in the OA filed MA No.2173/2015 seeking to recall the order dated 06.05.2015 in dismissing the MA 1437/2015, for default. The same was allowed on 17.08.2015 subject to payment of costs of Rs.1000/- and accordingly, the MA No.1437/2015 was restored and after hearing, the same was disposed of on 27.08.2015 as under:

"MA 1437/2015

This MA has been filed by the first respondent in OA No.4452/2013 seeking to recall the Order dated 20.1.2015 passed by this Tribunal in OA No.4452/2013 and to restore the OA 4452/2013 to its original position.

This Tribunal by final judgment dated 20.1.2015 disposed of OA No.4452/2013 after hearing the applicant in person and learned counsel for respondent no.2 and also after perusing the pleadings on record including the counter filed on behalf of respondent no.1, since there was no representation on behalf of respondent no.1 on the said date. The OA was disposed of on merits after considering all the material on record and also after hearing the applicant in person and counsel for the respondent no.2 who were present in the Court. Since the OA was disposed of on merit, this Tribunal has become *functus officio* to pass any order. Accordingly, the present MA is dismissed as not maintainable."

5. Thereafter the first respondent in the OA filed the present RA along with MA No.531/2016 seeking condonation of delay of 300 days in filing the RA.

6. Heard Ms. Charu Ambwani, the learned counsel for the review applicant and the original applicant in person, who is the respondent No.1 in the RA, and perused the pleadings on record.

7. In the circumstances, and for the reasons mentioned therein, the MA No.531/2016, filed seeking condonation of delay in filing the RA is allowed and the delay is condoned.

8. The main grounds pressed by the learned counsel for the review applicant are as under:

- i) The Tribunal erred in disposing of the OA, ex-parte and without hearing the arguments of the review applicant, who is the Respondent No.1 in the OA.
- ii) The Tribunal erred in allowing the OA by accepting the contention of the applicant that the relevant ACRs containing below benchmark gradings, basing on which the applicant was denied the granting of 2nd MACP, w.e.f. 1.09.2008, were never communicated to him.

9. At the outset, the order dated 20.01.2015 under which the OA No.4452/2013 was allowed, is not an ex-parte order, since the counsel for the review applicant, who is the 1st Respondent in the OA was not present on the date of hearing, i.e., on 04.12.2014, this Tribunal heard the arguments of the original applicant who appeared in person and the learned counsel for the respondent No.2 in the OA and after considering the separate counters filed on behalf of Respondent No.1 and 2, disposed of the OA. Hence, the contention of the review applicant in this regard is unsustainable.

10. The learned counsel for the review applicant while categorically admitting that there is no denial in their counter affidavit in the OA to

the specific contentions raised by the applicant under ground No.5(vii) that the relevant ACRs containing below benchmark gradings were never communicated to him, however, submits that the contentions made by them in the counter, as a whole, indicates that they deny the said contention.

11. Any party to a lis, if failed to take specific grounds or deny the specific contentions of the other parties in their affidavits/counter affidavits, at the appropriate time, cannot subsequently contend that their intention was something else and that the Court should understand the same by reading in between the lines.

12. The other grounds raised by the review applicants are on merits and that the learned counsel tried to re-argue the matter which is not permissible in a review.

13. In **State of West Bengal and Others v. Kamal Sengupta and Another** – (2008) 8 SCC 612 held that “an order or decision or judgement cannot be corrected merely because it is erroneous in law or on the ground a different view could have been taken by the Court/Tribunal on a point of fact or law and while exercising the power of review the Court/Tribunal concerned cannot sit in an appeal over its judgment/decision.”

14. In a recent judgment, the Hon’ble Supreme Court in **Kamlesh Verma v. Mayawati and Others** (2013) 8 SCC 320, after discussing

various case laws on the jurisdiction and scope of review, summarised the principles of review as under:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius & Ors.*, [(1955) 1 SCR 520], to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, [JT 2013 (8) SC 275].

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."

15. In the circumstances and for the aforesaid reasons, we do not see any merit in the review and accordingly, the same is dismissed with costs of Rs.5000/- payable to the applicant, within a period of two months from the date of receipt of a copy of this order. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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