Central Administrative Tribunal
Principal Bench, New Delhi

R.A.No.310/2015 in O.A. No.1786/2011

Wednesday, this the 24th day of February 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Mr. Saresh Sharma
s/o Mr. Hari Prakash Sharma, aged 43 years
Presently posted as
Assistant Drugs Controller (India)
At : Central Drugs Standard Control Organization
Directorate of Health and
Family welfare Govt. of India
CDSCO, Sub Zone, Sector 39-C
Chandigarh-160036

..Applicant

(Nemo)

Versus

1. Union of India
   Through Secretary
   Ministry of health & Family Welfare
   Nirman Bhawan, New Delh-2

..Respondents

(Mr. S M Arif, Advocate for respondent No.2 -
Nemo for other respondents)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

There is no appearance on behalf of the applicant. Mr. S M Arif, learned counsel for respondent No.2 submitted that in the guise of Review Application, the applicant preferred an appeal. We find sufficient merit in the submission put-forth by Mr. Arif, learned counsel for respondent No.2. In the Review Application, the applicant has raised as many as 14 grounds.

In the grounds raised by him, he has tried to espouse that the Order passed by this Tribunal is erroneous. It is *stare decisis* that even when the Order passed is wrong and erroneous, the Review Application would not be maintainable. The Review Application can be entertained only on the limited grounds, such as (i) there is an error apparent on the face of record, (ii) some such documents, which could not be produced at the time of final adjudication despite due diligence, are brought to the notice of the Court with Review Application and (iii) there is some other sufficient reason. We do not find any such ground in the present proceedings.

2. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleshwar Sharma** v. **Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo Singh** v. **State of Punjab**, AIR 1963 SC 1909 and observed as under:-

> "It is true as observed by this Court in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

3. Similarly in the case of **Ajit Kumar Rath** v. **State of Orissa & others**, AIR 2000 SC 85 the Apex Court reiterated that power of review

vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

> "The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently in the rule.
>
> Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."
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> [Emphasis added]

4. In the case of **Gopal Singh** v. **State Cadre Forest Officers' Assn. & others**, (2007) 9 SCC 369, the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Relevant excerpt of the judgment reads thus:-

> "The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

5. In **Union of India** v. **Tarit Ranjan Das,** 2004 SCC (L&S) 160, the Hon'ble Supreme Court ruled thus:

"13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. 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 order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court."

6. In **Kamlesh Verma** v. **Mayawati and others**, (2013) 8 SCC 320, the Hon'ble Supreme Court has provided both the negative and the affirmative *lis* where a review is maintainable or not maintainable. For the sake of clarity, we extract the relevant portion 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."

7. In view of the aforementioned, Review Application is found devoid of merit and the same is accordingly dismissed. No costs.

(K. N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

February 24, 2016
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