

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Review Application No. 260132016
(Arising Out of O.A. No.260/426 of 2014)
Cuttack, this the 3rd day of April, 2017

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)

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1. B. Laxmi, aged about 59 years, widow (first wife) of Late Sh. B. Thavitayya, Ex. Grade-III Fitter in C&W, Department of South Eastern Railway and at present resident of Narahari Colony, Near Railway High School, Jharsuguda-768201, Odisha.
2. B. Dhallamma, (Dead) and its L. R., the Applicant No.3 has been substituted as he was already on record.
3. B. Naarayan Rao, aged about 25 years, S/o. Late Sh. B. Tavitayya, resident of Narahari Colony, Near Railway High School, Jharsuguda-768201, Odisha.

...Applicants

(By the Advocate-M/s. R. B. Mohapatra)

-VERSUS-

Union of India Represented through

1. General Manager, South Eastern Railway, Garden Reach, Kolkata-700043, (West Bengal).
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-700043, (West Bengal).
3. Senior Divisional personnel Officer, Chakradharpur Division, South Eastern railway, At/PO-Chakradharpur, Dist-Singhbhum(Jharkhand).
4. Senior Sectional Engineer(C&W), Jharsuguda Railway Depot., S.E. Railway, At/PO/Dist-Jharsuguda.

Respondents

By the Advocate- (Mr. T. Rath)

ORDER

R.C. MISRA, MEMBER(A):

1. This R.A. is filed by the applicants in O.A. No.426/14 seeking a review of the order in O.A. No.426 of 2014. Since the order in the OA was passed on 11.03.2016, and the review application is filed on 11.04.2016, I hold that the application is filed in time. In view of the provisions of the Rule-17(1) of the CAT (Procedure) Rules, a review application is to be disposed of by circulation, unless otherwise ordered by the Bench concerned. In the present case, however, notice was issued to the respondents who filed their reply, and after hearing Ld. Counsels for both sides the matter was reserved for orders on 20.02.2017.

2. The grounds taken by the review applicants are as under:
 - (a) The decision of the Tribunal in OA No. 915/2012 passed on 04.04.2016 creates the cause of action for review of order dated 11.03.2016 in OA No.426 of 2014, since the facts in these O.As are identical.
 - (b) There is an error apparent on the face of the record, and there is also discovery of new and important evidence.
 - (c) Review is a means of Judicial re-examination.
3. The context of the review application is that the decision of the O.A No.426/2014 dated 11.03.2016 did not favour the applicant who approached the Tribunal challenging the decision of Railway authorities refusing to grant compassionate appointment on the ground of provisions of Railway Board's letter dated 02.01.1992 circulated vide Railway Estt.No.20/1992 stipulating that compassionate appointment to the second widow or her children is not to be considered unless administration has permitted the second marriage in special circumstances. The O.A. was dismissed on the ground that railway authorities have rightly rejected the prayer for compassionate appointment because of the restriction imposed by circular dated 02.01.1992. Subsequently, O.A. No.915/2012 was disposed of by an order dated 04.04.2016. This O.A. had similar set of facts but it was allowed in favour of the applicant in that O.A. directing the Railway to reconsider the claim for compassionate appointment. The plea of the review applicants is that after the order dated 04.04.2016, they feel discriminated against, and order in their

case should be modified by applying the ratio that was applied in the O.A. No. 915/2012, that was subsequently decided.

4. In O.A. No. 915/2012, the applicant placed before the Tribunal the judgment of the Hon'ble High Court of Calcutta in the Namita Golder case in which the court quashed the circular dated 02.01.1992 of the Railways to the extent that it prevents the children of second wife from being considered for appointment on compassionate ground. By brining this argument to the notice of the Tribunal the Ld. Counsel for the applicant in that O.A. successfully argued that the prayer of the applicant cannot be summarily rejected on the basis of Circular dated 02.01.1992.

5. The decision of the Hon'ble High Court in Namita Golder Case was not brought to the notice of the Tribunal while it was adjudicating upon the facts in O.A. No. 426/2014. On the basis of the pleadings in the O.A., the matter was decided. The decision of the Tribunal was based mainly upon the Estt. Circular dated 02.01.1992. The applicant did not place before the Tribunal any argument as to why the circular dated 02.01.1992 should be considered to be inoperative, or inapplicable. The decision was taken on the basis of facts and arguments placed by both parties to the OA.

6. As it would therefore be seen, there is no question of discrimination. It is also not an error apparent on the fact of the record, because on going through the order dated 11.03.2016, no mistake is visible. Error apparent on the face of the record, would mean an error that could well be detected without going into any further process of adjudication or examination. In the review petition the review applicant has urged that review means a judicial re-

examination. The issue is whether such re-examination would be within the scope of a review petition. One thing is, however, clear; that the theory of apparent error apparent on the face of the record would not convincingly be applied here. The review applicants contention is that it was a 'mistake' is also highly misconceived. If the order dated 11.03.2016 is gone through in isolation from the subsequent order dated 04.04.2016, no mistake or error would ever be seen.

7. The ld. Counsel for the applicant has contended that review means a “Judicial re-examination” in certain specified and prescribed circumstances. The most important issue in the review application is whether the prayer of the applicant will be within the scope of review of an order by the Tribunal. The Ld. Counsel has cited the decision of the Hon’ble Apex Court in the case of Gopabandhu Biswal Vs. Krishna Chandra Mohanty & Others reported in AIR 1998 SC 1872. On perusal of this order I have noticed the following observation of the Apex Court with regard to power of review to be exercised by the Tribunal.

“The power of review which is granted to an Administrative Tribunal is similar to power given to a Civil Court under Order 47, Rule 1 of the CPC. Therefore, any person (inter-alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under order 47 Rule (I)(I)(a). An appeal lies to this court from a decision of the Administrative Tribunal. If an appeal is preferred, the power to review cannot be exercised. In the present case, a special leave petition to file an appeal was preferred from the judgment of the Tribunal in T.A. No.1 of 1989 to this Court, and the special leave petition was rejected. As a result, the order of the Tribunal in T.A. No.1 of 1989 became final and binding. The rejection of a petition for leave to appeal under article 136 of the constitution, in effect amounts to declining to entertain an appeal, thus making the judgment and order appealed against final and binding. Once a special leave petition is filed and rejected, the party can not go back to the Tribunal to apply for review.”

8. The ratio of the decision quoted above is that after an appeal from an order of the Tribunal is rejected, the applicant cannot again come back to the Tribunal praying for a review of the order. After rejection of the appeal the order of the Tribunal would be considered final and binding, and review of that order is not permissible. However, the facts of this review application are different and the judgment of the Hon'ble Apex Court, it appears, does not help the case of the applicant.

9. The review applicant has also cited the decision of the Hon'ble Apex Court in BCCI and another Vs. Netaji Cricket Club and other reported in AIR 2005 SC 592. The Ld. Counsel for Railways has argued that both the decisions cited run squarely opposite to the submissions made by review applicant. He has cited the following decisions of the Hon'ble Apex Court in the case of Thungathadra Industries Ltd. Vs. the Government of A.P. represented by the Deputy Commissioner of Commercial Taxes Anantpur, reported in AIR 1964 SC 1372.

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is the substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

The ratio of this decision is that the scope of review is restricted, and that power of review cannot be exercised in order to embark upon a fresh adjudication of the facts of a case.

10. It is the settled law that the power of review is restricted, and a de-novo adjudication of the case is not permissible in exercise of the power of review. However, it is necessary to have a look at the facts of the case, and the circumstances in which the review application has been preferred. In O.A. No.426/2014 the issue for consideration was whether children born out of second marriage were eligible to be considered for compassionate appointment after the death of the railway servant while in service. The Tribunal took into consideration the Railway Board circular dated 02.01.1992 which stipulated that “appointment on compassionate ground to the second wife or her children are not to be considered unless the administration has permitted the second marriage in special circumstances, taking into account the personal law.” The Tribunal on the basis of the said circular, held that the prayer of the applicant was found not to be in conformity with the circular, and therefore, Railway authorities had correctly decided that applicant could not be considered for compassionate appointment. Thus, the O.A. was dismissed by an order dated 11.03.2016.

11. In O.A. No. 915 of 2012 which was decided subsequently by an order dated 04.04.2016, the issue was the same, whether the children born out of a second marriage of a railway employee are eligible for compassionate appointment. The respondents in that O.A. had relied upon the Railway circular dated 02.01.1992. under which second wife and children born out of second marriage were not eligible for compassionate appointment unless permission was granted by the authorities for second marriage. However, the Ld. Counsel for the applicant brought to the notice

of the Tribunal, the judgment of the Hon'ble High Court of Calcutta in Namita Galadar case in which the Railway circular dated 02.01.1992 was quashed. The Hon'ble High Court of Calcutta observed as follows:

“We are however of the opinion that the circular issued by the Railway Board on 2nd January, 1992 preventing the children of the second marriage from being considered for appointment on compassionate ground cannot be sustained in the eyes of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in Rameswari Devi(Supra).”

In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground.”

It was also brought to notice that the Principal Bench in O.A. No.3424 of 2012 in the matter of Pankaj Kumar Vs. Union of India by order dated 29.01.2014 decided that Railway Board circular dated 02.01.1992 cannot deprive the children of second wife the right to be considered for compassionate appointment. After considering the judgment of the Calcutta High Court in the Namita Goldar case, and also judgments of other courts the tribunal came to the following conclusions:

“Against this background, it is significant to note that the Hon'ble High Court of Calcutta has specifically quashed this circular of the Railway Board to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground. In the face of it, the ratio of decision in Namita Goldar case lifts the embargo on children of second marriage for consideration of compassionate appointment. By bringing this judgment to the notice of the Tribunal the Ld. Counsel for the applicant has successfully argued that the prayer of the applicant for compassionate appointment cannot be summarily rejected on the basis of Estt. Serial No. 20/1992 dated 02.01.1992.”

12. It is to be noted here that facts of the O.A. No. 426/2014, and those in respect of O.A. NO.915/2012 are similar, and the issue for resolution was the same. The O.A. 426/2014 was dismissed on the basis of the Estt. Serial dated 02.01.1992 and the applicant could not establish his claim. The O.A. 915/2012 was however decided on a later date, where in the applicant's prayer was allowed, basing upon the decision of the Hon'ble Calcutta High Court in Namita Goldar case, and several other decisions, which applicants' counsel brought to the notice of the Tribunal. In Namita Goldar case, the Estt. Serial 02.01.1992, was quashed, and it was therefore not considered a legally sustainable ground for denying the child of second marriage, the consideration for compassionate appointment. It is evident, in this regard that review applicant was not aware of the decision in the Namita Goldar case, nor was it within the knowledge of the Tribunal. Had it been brought to the notice of the Tribunal, the consideration of the O.A would have taken a different turn.

13. Order 47 Rule 1 of the OPC deals with "review". This is quoted below.

- 1) " Any person considering himself aggrieved.
 - (a) By a decree or order from which no appeal was allowed, but which no appeal has been preferred.
 - (b) By decree or order from which no appeal is allowed or.
 - (c) By a decision or a reference from a court of small causes, and who from the discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order."

14. In the present case, the order passed in OA No. 426/2014 does not reveal any error apparent on the face of record. The order does not suffer from any material regularity and no fact or law as per submission made in the OA was ignored. However, as discussed in the paragraph elaborately, the only ground for review is that the judgment of Calcutta High Court in the Namita Golder case which quashed the Estt. Srl. Dated 02.01.1992, was not brought to the notice of the Tribunal. The question finally for decision is whether this is a sufficient ground for review. In this regard, the explanation to below order 47 Rule 1 of the CPC reads as follows.

“ The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. ”

This explanation will not, in my opinion, apply to the facts of this review application. The orders of the Tribunal in OA No. 426/2014 was not based upon any decision on a question of law. It was only based upon the Estt. Serial dated 02.01.1992 quoted above, It was not brought to the knowledge of the Tribunal that this instruction of the Railway Board was already quashed by court order. In the OA 915/2012, the present legal status of the said instruction was brought to the notice of the Tribunal, and therefore, in that OA the prayer of the applicant was allowed. After the pronouncement of the decision in OA 915/2012, the Ld. Counsel of the3 applicant being aware of this position of law, has come up with this review application. Therefore, the cause of justice will in my opinion be defeated, unless this review is allowed. The Tribunal being now made aware of the

position of the law as decided in the Namita Golder Case can not ignore this evidence. In my opinion, therefore, the Tribunal has adequate ground for exercising the power of review in this case, in order to meet the ends of justice.

15. In view of the discussions made above, the order passed in O.A. No.426/2014 is modified as follows;

“It has been brought to the notice of the Tribunal in the Review Application that the Estt. Sr. dated 02.01.1992 which stipulates that compassionate appointment shall not be considered for second wife and children, unless the second marriage is permitted in special circumstances has been quashed and set aside to the extent it prevents the children of a second wife from compassionate appointment, by the Hon’ble Calcutta High Court in Namita Golder case [2010(1) CLJ (Cal)]. I therefore, do not consider the said instruction as a legally sustainable ground to refuse compassionate appointment to the applicant. Accordingly, the order of the G.M. Eco. Railways dated 25.04.2014 which is impugned in the case is quashed. The applicant is held to be eligible for consideration for compassionate appointment and Respondents are directed to reconsider the prayer for compassionate appointment, and communicate a reasoned and speaking order to the applicant within 90 days of receiving a copy of the order.

16. The Review Application is thus allowed.

(R.C.MISRA)
MEMBER(A)

K.B.

