

60000618270918290

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Jodhpur, this the 27th September, 2018
CORAM**

Hon'ble Smt Hina P. Shah, Judicial Member

1. Review Application No.290/00005/2018 in OA No. 290/00048/17

**Mr Jagdish Solanki S/o Shri Lal Chand, aged 43 years r/o 3rd Pole,
Mahamandir, Jodhpur (Aggrieved party).**

.....Applicant

By Advocate : Mr T.C. Gupta.

Versus

**1. Union of India through the Finance Secretary, Ministry of Finance,
Department of Revenue, Government of India, New Delhi-110001.**

**2. Pr. Chief Commissioner of Income Tax, NCR Building, Statue Circle,
Jaipur-302005.**

**3. Chief Commissioner of Income Tax, Paota C Road, Jodhpur –
342010.**

.....Respondents

2. Review Application No.290/00006/2018 in OA No. 290/00048/17

**1. Income-tax Contingent Employee's Union, Income-tax Office,
Jodhpur.**

(Association of casual labours of Income-tax, Rajasthan Region)

**2. Kamal Pal S/o Shri Babu Lal, aged about 43 years, R/o Plot No. 147,
Hudco Quarters, Kirti Nagar, Jodhpur-342001.**

(A Member of the Income-tax Contingent Employee's Union)

.....Applicants

By Advocate : Mr T.C. Gupta.

Versus

**1. Union of India through the Finance Secretary, Ministry of Finance,
Department of Revenue, Government of India, New Delhi-110001.**

**2. Pr. Chief Commissioner of Income Tax, NCR Building, Statue Circle,
Jaipur-302005.**

**3. Chief Commissioner of Income Tax, Paota C Road, Jodhpur –
342010.**

.....Respondents

ORDER (By circulation)

**Review application No. 290/00005/18 has been filed by Mr
Jagdish Solanki and Review Application No. 290/00006/18 has been**

60000618270918290

filed by Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur alongwith Mr Kamal Pal seeking review of order dated 24.08.2018 passed by this Tribunal (common order) in Original Applications No. 290/00047/2017 and 290/00048/17 on the issue of maintainability.

2. OA No. 290/00048/17 was filed by an Association viz. 'Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur' joined by one affected person namely Mr Mahendra Singh S/o Shri Amar Singh as per Rule 4 (5) (b) of CAT (Procedure) Rules, 1987. Since facts mentioned and grounds relied upon on the issue of maintainability of Original Applications filed in the name of 'Association' were same, Original Applications No. 290/00047/17 and 290/00048/17 were heard together on the issue of maintainability and dismissed by a common order dated 24.08.2018. While dismissing these Original Applications on the issue of maintainability, this Tribunal has passed following directions:

(i) This order shall not prejudice the right of the person(s) who wish to file application under Section 19 of the Administrative Tribunals Act, 1985 in individual capacity or joins together in Single Application as per rule 4(5)(a) of The Central Administrative Tribunal (Procedure) Rules, 1987.

(ii) Heareinafter, Registry shall carefully scrutinize the applications filed under rule 4(5)(b) of 'The Central Administrative Tribunal (Procedure) Rules, 1987' readwith rule 7 of 'The Central Administrative Tribunal Rules of Practice, 1993'. A separate application seeking leave of the Tribunal for joining together to pursue the matters as per rule 4(5)(b) of 'The Central Administrative Tribunal (Procedure) Rules, 1987' shall be preferred alongwith OA for consideration of the Court. Registry shall issue order in this regard.

(iii) The cost of Rs 50,000/- imposed upon Mr Jagdish Solanki, President, Income-tax Contingent Employee's Union, Jodhpur shall be deposited by him in Rajasthan State Legal Services Authority within a period of 03 months from the date of receipt of a copy of this order. It is made clear that after producing receipt of aforesaid cost, he can approach this Tribunal.

(iv) Certified copy of this order be placed in all connected matters.

3. Review Application No. 290/00005/2018 has been filed by Mr Jagdish Solanki presenting himself to be an aggrieved person. It is seen that in order dated 24.08.2018, direction was issued against the President of Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur, i.e. Mr Jagdish Solanki while taking into consideration arguments advanced and record available with the Bench on the issue of maintainability of OA by an 'Association'. Furthermore, Mr Jagdish Solanki, while presenting himself as an aggrieved person in individual

60000618270918290

capacity, filed two separate review applications, i.e. RA No. 290/00004/18 & 290/00005/18 against order dated 24.08.2018, which is a common order for OA No. 290/00047/17 & OA No. 290/00048/17. The facts, grounds relied on and documents filed by 'Association' on the issue of maintainability in the aforesaid Original Applications were the same and also the RA No. 290/00004/18 filed by Mr Jagdish Solanki presenting himself as an aggrieved party in OA No. 290/00047/17 seeking review of the same order, i.e. order dated 24.08.2018 which has already been dismissed by circulation vide order dated 19.09.2018 passed in the aforesaid RA. Hence, now he cannot be allowed to seek review of the same order twice, i.e. order dated 24.08.2018 (Annex. RA/1), by way of filing another Review Application in OA No. 290/00048/18. Accordingly, RA No. 290/00005/18 filed by Mr Jagdish Solanki does not lie in view of order dated 19.09.2018 passed in RA No. 290/00004/18.

4. RA No. 290/00006/18 has been filed by Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur alongwith Mr Kamal Pal. It is noticed that authorization at page 35 of the paper book has been signed by Mr Jagdish Solanki, President of Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur whereby he authorized Mr Kamal Pal to sign, verify and file RA and any other material on behalf of the Association. Furthermore, copy of Certificate of Registration of Trade Union, Constitution of 'Income Tax Contingent Employees Union, Rajasthan Region' and Resolution dated 20.03.2015 of the 'Association' have also been annexed as Annex. RA/2 from running page 25 to 34 of the paper book of Review Application No. 290/00006/18.

5. Original Applications No. 290/00047/17 & 290/00048/17 were dismissed on the issue of maintainability. The applicant 'Association' filed copy of Constitution of 'Association' and Resolution at Annex. RA/2 attested by their counsel Mr T.C. Gupta, Advocate in the present review application (290/00006/18). On perusal of documents annexed as Annex. RA/2, it is again found that Resolution does not bear any name/signature of office bearer of the 'Association' and as such, office bearers are not identifiable. The resolution filed by the review-applicant is reproduced below:

vkt fnukad 20-03-2015 dks budeVSDI daVhtsaV ,EIykbZt ;wfu;u ds
lnL;ksa dh ehfVax gqbZA ftlesa fuEu eqn~nksa ij fopkj foe" kZ fd;k x;k
rFkk vko";d fu.kZ; fy, x,A

1- deZpkjh dh leL;k,a %&

d& deZpkfj;ksa dks NBs osru vk;ksx ds vuqlkj c<+k gqvks osru ugh
feyukA

[k& fiNys dbZ o'kksZa ls cksul ugha feyukA

x& deZpkfj;ksa dks jsxqyj djus dk ekeyk bR;kfnA

bu eqn~nksa ij iwoZ esa Jh ts ds dkSf"kd rFkk jh ts-ds- feJk odhy

60000618270918290

ds ek;/e ls deZpkfj;ksa us vius&vius Lrj ij dSV rFkk gkbZ dksVZ esa dsl yM+sA bls fy, xjhc deZpkfj;ksa dks Hkkjh ek=k esa Qhl ds :i esa Hkqxrku odhy dks djuk iM+kA

vk;dj foHkkx esa iwoZ esa Isokjr Jh Vh-lh- xqIrk] fMIVh deh"uj Isokfuo`fr ds ckn odhy dk dke dj jgs gSaA deZpkfj;ksa ds dsl yM+us ds fy, tc muls lEidZ fd;k x;k rks mUgksausa crk;k fd os bu deZpkfj;ksa dks gj ekeys esa fu%"kqYd dkuwuh lgk;rk nsus o gj Lrj ij fu%"kqYd dsl yM+us dks rS;kj gSaA mUgksausa ;g Hkh crk;k fd vkerkSj ij lHkh deZpkfj;ksa dh leku leL;k,a gSa blfy, deZpkfj;ksa dks vyx&vyx dsl yxkus dh t:jr ugha gS rFkk bl rjg ds T;knkrj dsl ;wfu;u ds uke ij yxk, tk ldrs gSa ftlls ,d gh dsl ls lHkh deZpkfj;ksa dks Qk;nk fey ldrk gSA lNl;ksa us fopkj&foe"kZ ds ckn ;g fu.kZ; fy;k fd Jh Vh-lh-xqIrk ds ek;/e ls lHkh dsl ;wfu;u ds uke ls l{ke dksVZ esa yxk, tk,aA bl laca/k esa Jh Vh-lh-xqIrk dks ;wfu;u dk odhy vkxkeh vkns"kkSa rd fu;qDr fd;k tkrk gSA bl laca/k esa vxj dksbZ deZpkjh dh vyx leL;k gks ;k dksbZ deZpkjh ;wfu;u ls gVdj viuk dsl yxkuk pkgrk gks rks mls iwjH NwV gSA Jh xqIrk us crk;k fd os ,sls ekeyksa esa Hkh fu%"kqYd Isok nsus dks rS;kj gSA ;wfu;u ds uke ls tks Hkh dsl yxkuk gksxk mlds fy, ;wfu;u ds inkf/kdkjh Jh xqIrk th ls fopkj&foe"kZ djds muds ek;/e ls dsl yxk,axsa rFkk dsl dh iSjoh ds fy, tks Hkh vko";d gksxk mlds fy, Jh xqIrk th inkf/kdkfj;ksa ls fopkj&foe"kZ djds vko";d dk;Zokgh djsaxsA

;wfu;u ds uke ls dksbZ Hkh dsl yxkus ds fy, ;wfu;u ds v/;{k ;k ea=h fdlH Hkh lNl; dks vkWFkksjkbZt dj ldrs gSaA

2- ;g ;wfu;u vius fdlH lNl; ls dksbZ pank ;k vU; jkf"k ugha ysRH gSA D;ksafd vHkh rd ;wfu;u dk dksbZ [kpkZ ugha gSA dkuwuh eqn~nksa ij lHkh dksVZ dpgjH esa Jh xqIrk th fu%"kqYd Isok nsus ds fy, jkt+h gSaA ftlds fy, mudks fu;qDr fd;k x;k gSA lHkh dssl yM+us ds fy, Jh xqIrk th dkxt i=ksa dk [kpkZ Hkh Lo;a mBkus dks lger gSaA ;wfu;u dk vkSj fdlH Hkh izdkj dk [kpkZ ugha gSA blhfy, dksbZ pank olwy ugha fd;k tkrk gSA bl izdkj fcuk pank fn, gh jktLFkku izHkkj ds lHkh dST;wvy yscj ;wfu;u ds lNl; gSaA vxj fdlH lNl; dks dksbZ ,srjkt gks rks og ;wfu;u dh lNl;rk NksM+ ldrk gSA

Copy of Constitution of the Income Tax Contingent Employee's Union filed by the review applicants contains seal and signature of Additional Labour Commissioner (I.R.), Headquarter, Rajasthan, Jaipur, which is attested by Mr T.C. Gupta, Advocate. Section 4 and 5 (A) of the said Constitution annexed with the Review Application is reproduced below :

bUde VSDI dfUVutsaV ,EikykbZt ;wfu;u] jktLFkku izHkkj dk fo/kku /kkjk ua- 4 lNl;rk %

1& lk/kkj.k lNl; %&

v& jktLFkku esa vk;dj dk;kZy;ksa esa dk;Z djus okys nSfud osru Hkksxh deZpkjh ftUgsa pkgS fdlH Hkh in ls lacaf/kr fd;k tkrk gks rks ;wfu;u ds mn~ns";ksa dks ekurs gks] ;wfu;u dh lk/kkj.k lNl;rk izkIr dj

60000618270918290

ldrk gSA lk/kkj.k InL; ds fy, izos" k "kqYd 100@& :i;k gksxk rFkk ekfld InL; "kqYd 30@& :i;s izfrekg gksxkA

/kkjk ua-5 $\frac{1}{4}v\frac{1}{2}$ & InL;ksa ds vf/kdkj %

1- ;wfu;u ds fo/kku esa iznr vf/kdkjksa dk mi;ksx ogh InL; djus dks vf/kdkjh gksxk tks ;wfu;u ds fo/kku vkSj fu;eksa dk ikyu djsa rFkk ;wfu;u }kkj InL;rk "kqYd yxkrkj tek djok;sA mDr InL; ds fy;s ;wfu;u ds fu.kZ; dks ykxq djuk Hkh ykteh gksxkA

Notwithstanding the veracity of Resolution filed by review applicants, I, however, on going through both the documents, find that these documents are contradictory as Section 4(A) of the Constitution of 'Association', which prima-facie appears to be valid document, stipulates that there is monthly subscription of Rs 30/- for the members of the 'Association' and Section 5 (A) (1) of the aforesaid Constitution further stipulates that only those members who deposit their monthly subscription regularly would be eligible to exercise their rights as member of the 'Association'. Whereas, Resolution annexed alongwith instant Review Application suggests that there is no monthly subscription for the members of the 'Association'. Moreover, the Original Applications were filed in the year 2017 and Review Applications have been filed in the year 2018 but Resolution placed on record by the review applicants, whose authenticity is doubtful, is dated 20.03.2015. Furthermore, Resolution does not speak about any specific agenda item regarding filing of case taking into account specific issue/grievance of class/grade/categories of persons on whose behalf 'Association' is filing the joint application. Even the name of person said to be authorized for filing this Review Application by the President of 'Association', i.e. Mr Jagdish Solanki, to sign and verify the pleadings does not find any mention.

6. Although no reference of judgment of Full Bench passed in MA No. 11/2008 in Original Application No. 19/2008 (Kishan Lal & Ors Versus I.C.A.R. & Ors) pronounced on 22nd April, 2009 was made while hearing these Original Applications on maintainability wherein order dated 24.08.2018 was passed. The review applicants now, however, chose to refer the same in review application. As per Rule 7 of 'The Central Administrative Tribunal Rules of Practice, 1993', an 'Association' filing application before this Tribunal under Rule 4 (5) (b) of 'The Central Administrative Tribunal (Procedure) Rules, 1987' is enjoined upon to file a true copy of resolution of the Association empowering such person(s) to do so for verification. In the judgment of Full Bench referred by the review applicants, following issue was framed by the Tribunal in OA No. 19/2008 :

'Whether separate Misc. Application is required to seek 'permission' to join-together in on O.A.?'

The Full Bench while noticing Rule 7, Chapter-III of 'Central

Administrative Tribunal Rules of practice 1993” held that:

“On the same analogy, no separate application is required for granting permission under Rule 4(5) (a) of CAT Procedure Rules.”

The Full Bench in the peculiar facts and circumstances of that particular case considered and confined itself to Rule 4(5) (a) of the CAT Procedure Rules wherein individual having common cause of action can agitate the same in Single Application without insisting separate application from such persons joining together in Single Application. The Full Bench further observed that :

..... As already held above, care can always be taken whether the joint application is maintainable or not at appropriate stage when the Tribunal proceeds to entertain the O.A. on merit after taking into consideration the objections, if any, raised by the respondents or in case the Bench is of the opinion that joint application on behalf of the persons is not maintainable.

Thereafter, the Full Bench answered the aforesaid issue in the following manner :

“There is no need to file separate Misc. Application to seek permission to join together in one Original Application, if necessary facts under the heading ‘Facts of the case’ are incorporated in terms of Rule 4(5) of CAT (Procedure) Rules.”

After going through the judgment of Full Bench, it is clear that facts and circumstances as well as the basic issue considered in the said case was totally different from the present case. Full Bench has taken into consideration Rule 4 (5) (a) of CAT (Procedure) Rules, 1987 to answer the issue raised before them. Full Bench nowhere considered the issues of persons joining together in Single Application under the umbrella of ‘Association’ as per Rule 4 (5) (b) of CAT (Procedure) Rules, 1987. Hence, the judgment of Full Bench cited by the review applicants is not applicable in the facts and circumstances of the present case.

7. The Apex Court in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, reported in (2009) 10 SCC 464 in paragraphs 12 and 26 has held as under :-

“12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant,

in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

26. As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court."

The Apex Court in the aforesaid case has held that an error contemplated under Rule 1 Order 47 of Code of Civil Procedure, 1908 for permissibility of a review must be such, which is apparent on the face of the record and not an error which has to be fished out and searched and it has been further held that the error must be an error of an inadvertence.

8. By way of instant review application, it has also been prayed that matter may be heard in Division Bench in open court not comprising the Member who passed the order dated 24.08.2018. Rule 17 of CAT (Procedure) Rules, 1987 provides procedure for review, the relevant portion is reproduced below :

17. Application for review.—

(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) A review application shall ordinarily be heard by the same Bench which has passed the order, unless the Chairman may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party.

It is evident that as per CAT (Procedure) Rules, 1987, the Review Application shall ordinarily be disposed of by circulation. There are no valid grounds made out by the applicant to hear the review application in open court. Furthermore, applicant has to learn to accept the verdict of the Court if he has chosen to move the court in a certain way. He can choose the forum of his choice but not the Judge. It is the duty of the counsel to take the burden of an Officer of the Court

and protect the majesty of the Court. The review applicant has pleaded in the application that :

"It seems that the Bench/Member due to her experience in Mumbai Bench has passed such illegal and erroneous order as per illegal practice being followed there, ignoring the full Bench decision of Jodhpur Bench."

It can be seen that the applicant has repeated his indecent comments time and again. Indulging in making vague insinuations on the role of a Judge with a view to embarrass them warrants severest of the reprimands. Applicant Association on the advice of his counsel is repeating itself again on this count. In Chetak Contruction Ltd. vs. Om Prakash & Ors., (1998) 4 SCC 577, the Hon'ble Apex Court deprecated the practice of making allegations against the Judges and observed as under:

"Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order." Any criticism of the judicial institution, couched in a language which is apparently contemptuous, ultimately results in undermining the credibility of the institution. The applicant does not deserve any leniency in the name of public interest and deserves severest reprimand to refrain from such acts.

9. In view of discussions hereinabove made, intention of the applicants is to argue case again on the issue of maintainability on merits without supplementing legally permissible grounds for the same. Moreover, Review Application No. 290/00006/18 is not maintainable also in view of the fact that in OA No. 290/00048/17, Mr Mahendra Singh was authorized by the 'Association' to sign, verify and file the OA without filing any proper Resolution for the same and in the present RA also, Mr Kamal Pal said to be authorized by the 'Association' to sign, verify and file the RA but no valid Resolution for such authorization has been placed on record. As such, it is blatant misuse of process of law.

10. Apart from above discussions, Rule 17 (4) of CAT (Procedure) Rules, 1987 clearly provides that 'Where an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained in the same matter'. Review application against order dated 24.08.2018 has already been dismissed (RA No. 290/00004/18) and therefore, RA No. 290/00005/18 and 290/00006/18 cannot be entertained against the same order/judgment. Accordingly, both the RAs are dismissed.

11. A copy of this order be provided to all the parties through their respective counsels in the Original Applications.

60000618270918290

**[Hina P. Shah]
Judicial Member**

**Ss/-
14**