

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

REVIEW APPLICATION NO.10/2017

IN

ORIGINAL APPLICATION NO.109/2011

Date of Decision: 10th August, 2017.

CORAM: HON'BLE SHRI ARVIND J. ROHE, MEMBER (J)

HON'BLE MS. B. BHAMATHI, MEMBER (A)

Madhav V. Chhatre,
D-3/1, Post and Telegraphs Colony,
Madan Mohan Malaviya Road,
Mulund (W), Mumbai-400 080,
Contact No.022-25915620.

...Applicants.

(By Applicant Advocate: In Person)

Versus.

1. The Chief General Manager,
BSNL Maharashtra Circle,
6th floor, A wing, Admn. Bldg.,
Juhu Tara Road, Santacruz (W)
Mumbai-400 054.

2. The Chief Engineer (C),
BSNL Civil, Maharashtra, West Zone,
5th floor, A wing, Admn. Bldg.,
Juhu Tara Road, Santacruz (W),
Mumbai-400 054.
MAHARASHTRA.

...Respondents

(Respondents by Advocate: None)

(ORDER ON REVIEW APPLICATION BY CIRCULATION)

ORDER

Per:-HON'BLE MS.B. BHAMATHI, MEMBER (A)

The present Review Application is preferred by the applicant u/s 22(3)(f) of AT Act, 1985 for reviewing the order dated 17th March, 2017 passed in O.A. No.109 of 2011, passed by the Tribunal, whereby the Tribunal allowed the Original Application.

2. The prayer in the Review Application is as follows:-

“(1). That, this Hon’ble Tribunal be pleased to review its judgment and order dated 17th March, 2017 [Annexure as-RPA-1], and after examining being legality, validity and priority thereof, be please to allow as prayed for:-

(2). That, this Hon’ble Tribunal be pleased to consider the interst @ the rate of 10% per annum on arrears of pay as Applicant relies on O.a.37/2014 [Annexure-RPA-4] to meet the loss accrued.

(3). That, this Hon’ble Tribunal be pleased to consider the 2% Penal interest w.e.f. 16.09.2005 onwards on arrears of pay for misinterpreting the order of 12.10.1993 and 10.06.2005, intentionally and deliberately in favour of Applicant only.

(4). Any other and further orders may be passed as this Hon’ble Tribunal, Mumbai Bench, Mumbai deem fit and proper in the facts and circumstances of the case.

(5). Cost of this Review Petition be awarded for.”

3. It is the contention of the applicant that he filed OA.No.109/2011 before this Tribunal claiming for the following reliefs’:-

“(a). Call for records and proceeding

pertaining to the issuance of the letter dated 31.03.2010 issued by the office of respondent No.3 and after verification of the same on the basis of various points raised in the present application, quash and set aside the letter dated 31.03.2010 reviving the pay fixation order dated 02.12.2003 and also quash and set aside the pay fixation order dated 02.12.2003 and also quash and set aside the pay fixation order dated 02.12.2003 as arbitrary and bad in law.

(b). To direct the respondents to re-fix the pay of the applicant as was done by the Postal Electric Division vide order dated 28.06.2001 and as further clarified by the letter dated 10.06.2005 and fix the pay of the applicant as Rs.8,500/- as on 31.01.2003 and as Rs.8,700/- as on 01.11.2003 with all consequential benefits such as arrear of Pay and further correction in his pay fixation thereafter with interest.

(c). To grant such other and further reliefs as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(d). To provide the cost of this applicant."

4. The applicant stated that the O.A.No.109/2011 was dismissed vide order dated 03.02.2015 holding that OA does not merit any interference of this Tribunal. The relevant part of the order passed in OA.No.109/2011 reads as follows:-

"The Original Application does not merit any interference of this Tribunal. Accordingly, the O.A. is dismissed on merits as well as on the ground of delay and laches. No costs."

5. Thereafter, the applicant has challenged the order dated 03.02.1005, passed by this Tribunal, before the Hon'ble High Court of Judicature at Bombay in Writ Petition No.1188/2015. The Hon'ble High Court finally disposed of the writ petition vide its order dated 27.06.2016. The relevant portion of the

order is as follows:-

“Accordingly, we set aside the impugned order and remand the Original Application No.109 of 2011 to the CAT for fresh adjudication on merits. We make it clear that we have not examined the contentions of the parties on merits and therefore, such contentions are kept open for decision by the Cat. We, however, request the CAT to dispose of the Original Application No.109 of 2011 as expeditiously as possible.”

6. The applicant has further stated that on 14.10.2016, the OA was reopened and listed as 'High on Board' before the Tribunal. On 20.02.2017, the matter was heard finally and the OA was reserved for orders. The order was pronounced on 17.03.2017 with the following observations:-

“29. Accordingly the applicant's scale was rightly fixed on 26.06.2001 at Rs.5000-8000 granting advance increment on 11.12.1999. Hence, the pay was fixed at Rs.5375/- on 11.12.1999 instead of R.5300/- in the CDA scale of Rs.5000- 8000 corresponding to IDA scale of Rs.7100-200- 8100/- at Rs5600/-. Hence, his basic pay as on 01.11.2002 became Rs.8500/- as shown in his LPC dated 31.01.2003, as against Rs.8100/- shown in BSNL record. Accordingly, on 01.11.2003 his basic pay in IDA scale should have been fixed at Rs.8500 + 200 = 8700/- as against Rs.8100 + 200=8300/-. Hence, respondents are directed to restore the discontinued advance increment w.e.f. 11.12.1999.

30. The applicant has relied upon the order of the CAT Allahabad Bench in O.A.No.48 of 2005 delivered on 15.12.2010. As in the said case, there was an administrative error on the part of the respondents in this OA, since the OM dated 3005.2001 was misinterpreted to deny the benefit sought for.

31. Accordingly, the OA is Allowed. No costs.”

7. It is stated by the applicant that O.A.No.37/2014, which was earlier filed by him was allowed by this Tribunal vide its order dated 13.02.2015, directing the respondents to pay the deputation allowance to the applicant for the period from 15.06.1998 to 30.09.2000 with interest @ 10% per annum. The said O.A.No.37/2014 pertains to the deputation allowance, which is entirely different matter from the facts and circumstances of the present case i.e. O.A.No.109/2011, which pertains to pay fixation. Apart from this, the applicant has not prayed for any relief regarding payment of interest @ 10% per annum in the relief clause of O.A.No.109/2011 although, there is also no mention of O.A.No.37/2014 filed by him earlier before this Tribunal in any of the subsequent proceedings filed by him or during the course of final hearing in O.A.No.109/2011.

8. We next deal with the applicant's contention that Rule 22(3)(f) read with Order 47 Rule 1 CPC permits Tribunal to review its own order to see if it is a review or an appeal filed in the guise of an review. Whether even after due diligence, the error was not detected as required under Order 47 Rule 1 (c) CPC is also a point to be examined.

9. Section 22(3)(f) of the A.T. Act, 1985, reads as under :-

“22. Procedure and powers of Tribunals:

1. XX XX XX XX

2. XX XX XX XX

3. A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

(a) XX XX XX XX

(b) XX XX XX XX

(c) XX XX XX XX

(d) XX XX XX XX

(e) XX XX XX XX

(f) reviewing its decisions;

(g) XX XX XX XX

(h) XX XX XX XX

(i) XX XX XX XX".

10. We reproduce Order 47 Rule 1 of the CPC 1908 as under :-

"Any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes and who, from the discovery of new and important matter or 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 to the Court which passed the decree or made the order.

11. As observed by the Hon'ble Apex Court in the case of

Meera Bhanja vs. Nirmala Kumari Choudhury reported in (1995)

1 SCC 170, the Apex Court has decided the issue of review and has observed that review proceedings are not by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC and review petition is required to be entertained only on the ground of error apparent on the face of record.

12. As categorically pointed out by the Hon'ble Apex Court that who has decided the matter cannot re-appraise the entire issue afresh. Only the typographical error or the error apparent on record can be rectified in the Review Application. By means of the present Review Application the applicant tried to reopen the entire matter afresh.

13. The Hon'ble Apex Court in the case of **State of West Bengal and Ors.-vs- Kamal Sengupta and Another reported in 2008 (3) AISLJ 231** has held as follows:-

“5. In the matters concerning review the Tribunal is guided by Rule 47(1) of CPC. The parameter of a review application is limited in nature. The Apex Court has laid down the contours of a review application in the State of West Bengal and Ors. Vs KamalSengupta and Another (Supra) /

At para 28 the Hon'ble Apex Court has laid down eight factors to be kept in mind which are as follows:

(1) The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.

(2) The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.

(3) "that any other sufficient reasons" in order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(4) 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 the record.

(5) An erroneous decision cannot be correct under review.

(6) An order cannot be reviewed on the basis of subsequent decision/judgment of coordinate/ larger bench or a superior Court.

(7) The adjudication has to be with regard to material which were available at the time of initial decision subsequent event/ developments are not error apparent.

(8) Mere discovery of new/ important matter or evidence is not sufficient ground for review. The party also has 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 earlier before the Tribunal.

14. In the case of **Satyana^rayan Laxminarayan Hegde and others, Vs. Mallikarjun Bhavanappa Tirumale reported in AIR, 1960 SC 137**, the Hon'ble Apex Court has been pleased to observe as under:-

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above, discussion of the rival contentions show the alleged error

in the present case is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal Viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari."

15. In another case of **Parson Devi and Others Vs. Sumitri Devi and Others reported in (1997) 8 SCC -715**, the Hon'ble Apex Court has been pleased to observe as under:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be

corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

16. The Hon'ble Apex Court in the case of **Rajendra Kumar and Others Vs. Rambhai and Others reported in (2007) 15 SCC 513**, has dealt with the question of review and its maintainability and has been pleased to observe as under:-

4. The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

5. Coming to the merits of the case, suffice it to say that on perusal of the order, which has been reviewed by the order under challenge did not suffer from any serious illegality, which called for correction by exercise of review

jurisdiction. It is relevant to note here that the deceased was holding the post of Supervisor in Women and Child Welfare Department, Government of Karnataka at the time of her death and she was aged about 48 years at that time. The Salary drawn by the deceased, as evident from the salary certificate produced as additional evidence was Rs. 2570 p.m. The multiplier, which had been accepted by the Division Bench in the previous order, was 10. In the circumstances of the case, Multiplier of 10 was rightly taken. Thus, on merit also no interference with the order was called for."

16. Inder Chand Jain (Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs. reported in (2009) 14 SCC 663 has held as follows:-

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguised. In Lily Thomas Vs. Union of India this Court held SCC P. 251, Para 56)

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.”

17. Considering the facts of the case and law laid down by the Hon'ble Apex Court, we do not find any ground to interfere with the present review petition. Review petition lacks merit and as such it deserves to be dismissed. Accordingly, Review Petition is dismissed. No order as to

costs.

(Ms .B. Bhamahi)

Member (A)

(Arvind J. Rohee)

Member (J)

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