CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

RA No. 9 of 2018
(arising out of OA 17/2018

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

Brajendralal Singh, aged about 49 years, S/o Late gobinda Chandra Singh, working as GDSMD, Gobindapur Branch Post Office, Gobindapur, Pipili, Dist. Puri, R/o Village – Bhawanipur, PO/PS – Pipili, Dist. – Puri.

.....Applicant

VERSUS

1. Union of India, represented through Director General, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. – Khurda.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, Dist. – Khurda.
4. Post Master, Pipili Sub Post Office, At/PO Pipili, Dist. Puri.

.....Respondents.

For the applicant : Mr.S.Patra-I, counsel

For the respondents: Mr.P.K.Mohanty, counsel

Heard & reserved on : 11.1.2019 Order on : 18.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This Review Application, filed by the applicant of the OA No. 17/2018, is directed against the order dated 7.8.2018 of this tribunal passed in OA No. 17/2018 dismissing the OA. The Review Application has been filed within the time stipulated under the rules.

2. The facts of the case in brief is that the applicant, while working as a part time contingent worker under the respondents, was selected for the post of Gramin Dak Sevak (in short GDS) and he joined as GDS on 2.5.1998. Subsequently after being aware of the fact that casual labourers are to be given temporary status, he claimed for such benefit, which was not agreed. The OA filed by him was dismissed vide order dated 7.8.2018. The Review Application, directed against this order, advances the following grounds :

(i) The OA was dismissed on the ground that the applicant had himself relinquished the charge of contingent waterman on 2.5.1998 while joining as GDS and claiming the benefit of a casual employee with temporary status after

a long gap is not permissible. The applicant had submitted a letter dated 2.5.1998 (Annexure-A/10) addressed to the respondents by which, he had stated that in case there is possibility for appointment of the applicant against a higher post, then his case should be considered against that higher post. Hence, it would be incorrect to say that the applicant had relinquished the post of contingent waterman on 2.5.1998.

(ii) Since this letter dated 2.5.1998 was misplaced, it could not be produced by the applicant at the time of consideration of the OA. This document being an important document was not produced in the OA.

3. Under the law review of the order of the Tribunal is permissible under the Rule 1, Order 47 of the Civil Procedure Code, which specifies limited grounds for permitting such review. The Rule 1(1) of the Order 47 states as under :

> "1. Application for review of judgement
> (1) Any person considering himself aggrieved-
> (a) by a decree or order from which an appeal is allowed, but from 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 judgement to the Court which passed the decree or made the order."

4. The position of law in this regard has been clearly laid down in the judgement of Hon'ble Supreme Court in the case of **Kamlesh Verma v. Mayawati And Others,** 2013 AIR SC 3301, in which it was held as under:-

> "18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. 2006 5 SCC 501, held as under: (SCC pp. 504-505, paras 11-12)
>
> > "11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

> 12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a *review* petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47 rule 1 cpc. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles

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" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius 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. 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."

5. In **Ajit Kumar Rath v. State of Orissa (1999) 9 SCC 596**, Hon'ble Apex Court considered the power of review vested in the Tribunal and held as under:-

> "30. 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 of a person on 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 order was made. The power can also be exercised 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 analogous to those specified in the Rule.
>
> 31. 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."

. 6. In the case of **Inder Chand Jain (Dead) through Lrs. Vs. Motilal (dead) through Lrs. reported in (2009) 14 SCC 663,** Hon'ble Apex Court held as under:-

> "10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed 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 disguise. In Lily Thomas v. 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 and 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 an appeal in disguise."

7. Learned counsel for the applicant and the respondents were heard. The applicant's counsel argued that the benefit of the scheme for grant of temporary status to casual labourers was also applicable to the applicant. Respondents' counsel pointed out to the para 11 of the counter filed in the OA to argue that the said scheme was not applicable to the applicant since he was not full time casual employee.

8. I have considered the submissions of learned counsel. It is clear that the review is permissible if there is a discovery of a new or important facts or evidence, which was not within the applicant's knowledge and which after exercise of due diligence was not within his knowledge or could not be produced at the time of consideration of his OA as provided under Rule 1, Order 47. In this case the applicant claims that he had earlier submitted a

letter dated 2.5.1998, by which, he has informed the authorities if he will be entitled for other posts other than EDDA/GDS, then his case should be considered for such post after rejecting his appointment as EDDA/GDS. The applicant argues that he has not relinquished his post of Contingent Waterman in view of this letter dated 2.5.1998.

9. Admittedly, the applicant had left the post of Contingent Waterman and accepted the post of EDDA/GDS on 2.5.1998. If there is any benefit that would have been admissible as part time contingent waterman, the same would be available if he would have continued in the said post and after his discontinuation as Contingent Waterman, his claim for the said post would not be tenable as held in the impugned order dated 7.8.2018.

10. Further, if the letter dated 2.5.1998 had been submitted by the applicant as claimed in the Review Application, it cannot be said that this document was not within the knowledge of the applicant. If his plea that this document was misplaced would-be accepted, the applicant could have claimed about such letter in the OA. Hence, the letter dated 2.5.1998 cannot be treated as a new fact or document which was not within the knowledge of the applicant at the time of filing the OA even after due diligence. Hence, the grounds mentioned in the Review Application are not permissible grounds for reviewing the impugned order dated 7.8.2018.

11. In view of the above discussions, there is no merit in the claim of the applicant made in the Review Application. Accordingly, the Review Application lacks merit and is dismissed. No order as to costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath