



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

RA. 350/26/2016
OA. 350/497/2015
MA. 350/193/2017
MA. 350/359/2018
MA. 350/604/2016
MA. 350/797/2018

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Narayan Das, TGT (Social Studies) aged about 45 years, son of Sahadev Das, at present serving as TGT in Rifle Factory High School, at Ichapur, Post Office- Nawabganj, District- 24 Parganas (North), West Bengal- 743144.

.....Applicant.

-versus-

1. Union of India, represented through the DGOF & Chairman Ordnance Factory Board, 10A, S. K. Bose Road, Kolkata- 700001.
2. General Manager, Ordnance Factory, Badmal, AT/PO- Badmal, District- Balangir (Odisha)- 767070.
3. General Manager, Rifle Factory, Ichapore, Post Office- Nawabganj, District- 24 Parganas (North), West Bengal, Pin- 743144.

.....Respondents.

For the Applicant : In person

For the Respondents : Mr. T. K. Chatterjee, Counsel

Heard on :

Date of order : 3.5.19.

ORDERPer Ms. Bidisha Banerjee, JM:

Learned counsels were heard.

2. OA. 450/14 was preferred by the applicant against a transfer order dated 24.11.2011, a speaking order and non-disposal of a representation dated 08.01.2014. It was disposed of on 06.06.2014 with the following order:

"Heard the ld. Advocates appearing for the parties.

2. *It is the grievance made by the applicant that he be posted at Badmal in terms of the circular letter of placement in more or less same area or close area where his spouse is working. Earlier the representation was rejected but subsequently another representation has been filed on 8.1.2014. The respondents are directed to dispose of that representation in accordance with law within six weeks from the date of communication of the order and reasoned decision be communicated. It is made clear that we have not gone into the merits of the case and all points are kept open for taking a decision by the respondent authorities.*

3. *The application stands disposed of. No order as to costs."*

3. A speaking order was issued on 20.6.2014 that :

".....his said representation dated 08.01.2014 for transfer from RFI to OFBL was examined by OFB and after examination of the case OF Board vide its letter no. 02/Transfer/Husband-Wife/Per/NI dated 20.03.2014 conveyed that his request was not agreed to by OFB since there was no vacancy of TGT at OFBL.

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Record also shows the above communication from OF Board regretting the request for transfer was intimated to Shri Das vide RFI letter no. 342/13/TGT/NI/Estt. Dated 29.03.2014 which he received on the same date.

Thus in compliance with the order (oral) dated 06.06.2014 passed by the Hon'ble CAT, the application dated 08.01.2014 made by Shri Narayan Das, TGT, RFHS, Per No. 818568 seeking his transfer from RFI to OFBL stands disposed of."

4. CPC. 208/2014 was preferred by the applicant. On 3.2.2015 it was heard out and following order issued:

"2. Since a speaking order has been issued pursuant to the direction given by this Tribunal on 6.6.2014, nothing survives for adjudication.

3. Accordingly, the Contempt Proceedings are dropped. Notices issued, if any, are discharged. It goes without saying that the applicant will be at liberty to challenge the speaking order in a freshly constituted OA."

Therefore, inarguably and irrefutably this Tribunal in no uncertain terms permitted the applicant to assail the speaking order dated 20.06.2014.

5. Emboldened thereby, OA. 497/2015 was filed by the applicant with the following prayer:

"RELIEF SOUGHT FOR

(i) The petitioner prays the Hon'ble Tribunal that the Transfer order may judiciously and graciously be held illegal and quashed, and also the FAX message taken as weapon be rubbed to set an example in the worthiness of rule of law to protect the applicant from such vulnerability of defamation.

(ii) That the applicant further prays that he has been a victim of dirty office policies and as a result of such policies, he is encountering with an illegal transfer caused by the personal interest of some officials of the organisation. Those conspirators may be found out and brought to book with exemplary punishment.

CONSEQUENTIAL RELIEF

(i) The applicant prays that his total absence (Leave taken) due to forcible transfer and intentional regrettal of his prayer for cancellation of the order by the respondents before joining and his absence to meet the exigencies of his family members after joining at RFI to till date be treated as duty as a consequential relief to the illegal transfer order.

(ii) The Government accommodation under occupation of the applicant be allowed at normal licence fees than the damage rates as prescribed by the respondents and be regularised on his transfer."

As the challenge to the speaking order dated 20.06.2014 was conspicuously missing, and no prayer to seek quashing of speaking order was made, the OA was disposed of on 1.8.2016 with the following order:

"In as much as, while dropping the contempt proceedings the applicant was given liberty to assail the speaking order issued in terms of the order passed in OA. 450/14 and whereas by way of this instant OA the applicant has sought to assail the original transfer order that was already challenged in the said OA 450/14 but on some additional grounds, the OA is clearly not maintainable in law being barred by principles of res judicata.

Accordingly, this OA is disposed of with liberty to the applicant to assail the speaking order to seek quashing thereof if so advised and in accordance with law."

6. Having noticed that in an earlier round the very same transfer order dated 24.11.2011 was under challenge and this Tribunal while hearing out the matter, had directed the authorities to dispose of the representation dated 08.01.2014 which was disposed of by way of a speaking order on 20.6.2014 and that the contempt proceedings, initiated vide C.P.C. No. 208/2014 was ultimately dropped on 03.02.2015 with liberty to challenge the speaking order in a freshly instituted OA, but without challenging the speaking order the applicant once again preferred OA. 497/2015 against the same transfer order dated 24.11.2011, this Tribunal rejected the OA as barred by principles of res-judicata and as not maintainable, with liberty to the applicant to assail the speaking order in accordance with law.

7. The Review Petition being RA. 26/16 has been preferred on the following grounds:

"(i) From point 1 of the order issued on dt. 1.8.2016 it is evident that the principle of natural justice has not been followed during hearing of the matter.

(ii) The legality relating to the relevancy and admissibility of the materials were not discussed and wilful avoidance to this episode by the Hon'ble CAT will ensure stigma on the character of the applicant.

(iii) The OA. No. 0450/14 and CPC No. 208/14 would not overlap the present OA because in both of the earlier cases the orders have been passed without going into the merits of the case.

(iv) *The points of law and the facts in issued have been suppressed and technical defects have been allowed to crop up over the decision. The order hence becomes more administrative and least judicial in nature.*

(v) *There is complete challenge to the speaking order passed by the respondent on dt. 20.6.14 in compliance to the direction of the Hon'ble CAT in its order dt. 6.6.14, whereas the Hon'ble CAT has not glaces over it properly."*

8. Further, the applicant has alleged that the said order rendered in the OA. 497/2015 suffers from serious irregularity in the proceeding, violation of the principles of natural justice and also from erroneous assumption of facts, which if allowed to stand would cause miscarriage of justice. He has pleaded that in obedience to an earlier order, he filed OA. 497/2015 challenging the speaking order as well as the illegal transfer order. Therefore, there was no reason to hold that it was barred by res-judicata.

9. It is worth mentioning that the scope of review of an order is provided under order 47 Rule 1 CPC which runs as follows:-

"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."

10. In substance, a review is maintainable on the following grounds, as stipulated by the statute:-

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.*

11. Tribunal's power to review its own order in such grounds as enumerated supra, is well recognised. **[Judgment of Hon'ble Apex Court in case of Gopal Singh vs. State Cadre Forest Officers' Assn. and Others, (2007)9 SCC 369].**

12. The Hon'ble Apex Court on numerous occasions had deliberated upon the very same issue arriving at the conclusion that 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 of CPC. In **Aribam Tuleshwar Sharma v Aribam Pishak Sharma, (1979) 4 SCC 389=AIR 1979 SC 1047**, the apex court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code of Procedure was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to the apex court, it was held 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 inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."*

(Emphasis added)

13. In **Parsion Devi & Ors. vs. Sumitri Devi & Ors.**, (1997) 8 SCC 715, the Hon'ble Apex Court opined that:-

"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 of 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 a limited purpose and cannot be allowed to be "an appeal in disguise".

(Emphasis added)

14. The Hon'ble Apex Court also in the case of **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.**, reported in (2008) 8 SCC 612 held as under:-

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

15. The principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) 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 record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for **declaring the initial order/decision as vitiated by an error apparent.**

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

16. In the aforesaid backdrop, we find that the aggrieved applicant has preferred the RA. 26/2016 on 26.08.2016 to seek review of the order passed in OA. 497 of 2015 ^{on} as grounds enumerated earlier. The OA was filed pursuant to liberty granted to challenge a speaking order dated 20.06.2014.

17. We would note, as already stated hereinbefore, that no prayer seeking quashing of speaking order was ever made in the OA and no grounds were put forth as to why the speaking order dated 20.06.2014 was bad and deserved to be quashed.

18. Having noted that in both the OAs, the applicant has challenged only the transfer order, and in the subsequent OA, despite an opportunity in terms of

the order passed in the contempt application, the applicant failed to challenge the speaking order or to seek quashing thereof, the OA was dismissed with liberty to challenge the speaking order, and rightly so.

19. At hearing, when specific questions were put to the applicant appearing in person, whether he has challenged the consequent speaking order dated 20.06.2014 in terms of the liberty given on 03.02.2015, the applicant in person would vociferously submit that he has, but failed to place any such prayer and would repeatedly place an order dated 09.04.2014 issued prior to disposal of OA. 450/2014 and other requests regarding permission to occupy govt. accommodation. He even did not seek legal help from the Id. Counsels who were requested to advice him.

Therefore, in our considered opinion, the order passed in OA. 497/15 does not suffer from any self-evident factual error or "error apparent on the fact of the record," requiring a review. Hence, the RA is not maintainable.

20. In the aforesaid backdrop, the Review Application fails and is rejected.

21. Alongwith the RA the applicant has filed several miscellaneous applications (MAs) and has prayed for incorporation of reliefs that were missing in the OA. The applicant has preferred MA. 604/16 seeking stay of eviction, MA. 193/17 seeking stay of disciplinary proceedings and MA. 359/18 seeking for impleadment of parties to the RA.

22. MA. 604/16 seeking stay of notice issued by the Respondent No. 3 to terminate the tenancy under Section 106 of Transfer of Property Act, being not maintainable before this forum, is dismissed.

B.

23. Consequent to dismissal of RA, since the MA. 193/17 is in regard to the disciplinary proceedings which was not in issue in the OA, it is dismissed as not maintainable.

24. MA.359/18 has been preferred seeking impleadment of respondents to the OA which has already been dismissed. Since such prayer consequent to dismissal of RA is not maintainable, MA. 359/18 is dismissed.

25. The applicant has also preferred MA. 797/18 seeking quashing of compulsory retirement order and reinstatement with consequential benefit which have no connection with the prayer in the OA, hence dismissed as not maintainable.

26. However, it goes without saying that dismissal of the applications shall not stand in the way if the applicant desires to assail, in accordance with law, the departmental proceedings as well as all the orders issued subsequent to disposal of the contempt proceedings on 06.06.2014.

(Dr.NanditaChatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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