



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No. A.351/998/2017
R.A.351/2/2016
(M.A.351/06/2016)
(M.A.351/33/2015)
(O.A.351/27/2014)

Date of order : 4.2.19.

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms.) Nandita Chatterjee, Administrative Member

1. The Administrator(Lt. Governor),
Andaman & Nicobar Islands, \\
Raj Niwas, Port Blair-744101;
2. The Chief Secretary,
Andaman & Nicobar Administration,
Secretariat, Port Blair --744 101;
3. The Secretary(Power),
Andaman & Nicobar Administration,
Secretariat, Port Blair -- 744 101;
4. The Superintending Engineer,
Electricity Department ,
Andaman & Nicobar Administration,
Port Blair -- 744 101

.....Petitioners/Respondents

- Versus -

1. Shri Kishore Kumar,
Librarian,
Under Electricity Department,
Andaman & Nicobar Administration,
S/o Late Kishen Charan,
R/o RGT Road,
Port Blair Tehsil,
South Andaman,
Pin - 744 101

.....Respondent/applicant

2. The Union of India,
Service through the Secretary,

Ministry of Home Affairs,
Govt. of India,
New Delhi – 110001

.....Proforma Respondent

For the Review Applicants : Mr. N.A. Khan, counsel
For the opposite party : Mr. R. Singh, counsel

Heard on : 21.12.2018

Order on : 6.2.19.

ORDER

Bidisha Banerjee, Judicial Member

This M.A. has been preferred emboldened by an order passed by the Hon'ble High Court in WPCT.No.121/2017 recording the following order:-

"In such facts and circumstances, purely in interest of justice, the writ petitioners are granted an opportunity to move the Central Administrative Tribunal, Calcutta Bench, for hearing of its review application on its merit within three weeks from date."

2. The R.A. was dismissed by the Tribunal on earlier occasion on 20.12.2016 since it was preferred after nine months from passing of the order, in view of a Full Bench decision of Andhra Pradesh High Court rendered in the case of **G. Narasimha Rao vs. Regional Joint Director of School Education, Warrangal & Others, 2005(4)SLR 720**, which reads as under:-

*"3. A FULL BENCH of the Hon'ble Andhra Pradesh High Court rendered in the case of **G. Narasimha Rao vs. Regional Joint Director of School Education, Warrangal & Others, 2005(4)SLR 720**, has held that in view of Rule 19 read with Section 22(e) (f) of the Administrative Tribunal Act that the limitation to file review application within 30 days. The provision of extension of time in the light of the provision of limitation act will not be applicable in the matter of review before the Administrative Tribunal."*

4. However, as per order of the Hon'ble High Court, the R.A. is being reheard.

5. This R.A. has been preferred against order dated 16.11.2015 passed in the M.A.351/00033/2015(O.A.351/27/2014). On perusal of the order dated

16.11.2015 passed in M.A.351/00033/2015(O.A.351/27/2014), it appears that the order dated 11.06.2015 passed in the O.A. was modified on consent of both sides as under :-

"2. The applicant has filed this M.A. seeking the following reliefs:-

"It is therefore most humbly prayed before your Lordships to modify the order dated 11.06.2015 by directing the respondent authorities to fix the scale of pay of the petitioner to Rs.4500-7000 for the period from 01.01.1996 to 31.12.2005 at par with the Librarian Grade III of Education department and scale of pay of Rs.9300-34800 plus of Grade pay of Rs.4200/- for the period from 01.01.2006 consequent upon implementation upon 6th pay commission with all consequential benefits and pass appropriate order/orders in the interest of justice."

3. The order of this Tribunal dated 11.06.2015 shall be modified as agreed by both sides."

6. This R.A. has been preferred on the ground that this Tribunal has entertained the M.A. after 90 days from passing of the order without serving a copy upon the respondents in the O.A. and the order was passed at Calcutta Bench not at Circuit Bench at Port Blair and so, the respondents were not heard, whereas the order itself shows that the respondents' counsel had appeared on 16.11.2015 and agreed to the modification of the order as prayed by the applicant vide M.A.351/33/2015 at Kolkata.

In such view of the matter, the Review Applicants have failed to demonstrate that the order dated 16.11.2015 in M.A.351/33/2015(O.A.351/27/2014) was passed in absence of the respondents' counsel.

7. Since the Hon'ble High Court directed the review to be heard, we heard both the Ld. counsels.

8. The R.A. applicants failed to satisfy the conditions which may make the review application entertainable before this Tribunal as per law. It would be

pertinent to mention 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."

9. 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.*

10. 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].

11. 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)

12. 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)

13. 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:-

B

"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.

35. 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

B

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."

14. In view of the above, the R.A. is dismissed being devoid of any merit. No costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member