MA 192/2019
RA 16/2019
OA No.558/2016

New Delhi this the 18th day of February, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

The Union of India
Through the Home Secretary
Ministry of Home Affairs
Govt. of India North Block,
New Delhi.   …   Review Applicant

(By Advocate: Mr. Hanu Bhaskar)

VERSUS

Smt. Vimla Mehra, age 59 years,
Special Commissioner (DP),
R/o Bungalow No. 73,
New Moti Bagh Complex,
New Delhi-110 023.   … Review Respondent

O R D E R (ORAL)

Hon'ble Mr. S.N.Terdal, Member (J):

MA 192/2019

Heard.

MA is allowed. For the reasons stated in the Misc. application.

Review Application

This Review application is filed seeking review of the order dated 25.07.2018. We have perused the order passed by this Tribunal dated 25.07.2018. The order is based on the orders passed in OA 823/2012 and OA 1722/2012 which was followed in OA No. 3171/2015. As the orders passed in OA No. 823/2012 and OA 1722/2012 were taken in appeal before the Hon'ble High Court unsuccessfully by the respondents and further appeal before the Apex Court in Civil Appeal

No. 4648/2014 is still pending before the Hon'ble Supreme Court, as such in the impugned order dated 25.07.2018 it is further made very clear that in case the review applicant (original respondent in OA) were to succeed in their appeal before the Apex Court, the review respondent(Original applicant) in OA No. 558/2016 is required to repay the benefits of the impugned order within three months. The operative portion of the order is extracted below:

> "We, therefore, allow this OA in terms of the order passed in Smt. Kanwaljit Deol (supra). The respondent is directed to grant Apex Scale of Rs.80000(fixed) (pre-revised) to the applicant w.e.f. 07.05.2015 when the Apex Scale was granted to Mr. Devendra Kumar Pathak (AM-1979) and Mr. Sharad Kumar (HY-1979) (Annexure A-3). We further direct the respondent to re-determine the retrial benefits of the applicant accordingly and workout the arrears to be paid from 07.05.2015 till the date of her superannuation, i.e. 29.02.2016. The arrears shall be paid to her within a period of three months from the date of receipt of a copy of this order. The applicant shall be entitled to pension in commensurate with the Apex Scale. Needless to say that in the event of orders passed by this Tribunal in **R.N.Ravi** and **OPS Malik** (supra) getting reversed in the Apex Court in Civil Appeal No.4648/2014, the applicant shall be liable to refund the benefits, which she may receive by virtue of this order. In other words, this judgment shall remain subject to the outcome of ibid Civil Appeal pending before the Hon'ble Apex Court."

2.   As narrated above, the order dated 25.07.2018 is a well considered order. The scope of review lies in a narrow compass as prescribed under Order XLVII, Rule (1) of CPC. None of the grounds raised in the RA brings it within the scope and purview of review. It appears that the review applicant is trying to re-argue the matter afresh, as if in appeal, which is not permissible. If in the opinion of the review applicant the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, the review applicant cannot be allowed to raise the same grounds, which were considered and rejected by the Tribunal while passing the order under review.

3.   Existence of an error apparent on the face of the record is sine qua non for reviewing the order. The review applicant has failed to bring out any error apparent on the face of the order under review.

4.   On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others** Vs. **Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that "the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision."
At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

> "(i)   The power of Tribunal to review it 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) of CPC.
>
> (ii)   The Tribunal can review its decision on either of the grounds enumerated in order 47 Rule 1 and not otherwise.
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> (iii)   The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds
>
> (iv)   An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (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 a larger bench of the Tribunal or of a superior court.

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) 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.

(ix) 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."

5.   In view of the above discussion, we find that the Review Application has no merit and is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)   **(Nita Chowdhury)**
 Member (J)   **Member (A)**

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