

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

RA No.32 of 2018
IN
O.A. No.3829 of 2014

This the 4th Day of February 2019

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

Rishi Pal Tomar
S/o Sh. R.S. Tomar
R/o RZ-20M, Gali No. 4, Palam Road Sagarpur,
New Delhi.

....Review Applicant

(By Advocate : Ms. Jyoti Dutt Sharma)

Versus

1. Union of India through the Secretary
Ministry of Defence
South Block, New Delhi.
2. The Joint Secretary (Training) and
Chief Administrative Officer
Govt. of India, Ministry of Defence
E-Block, New Delhi – 110011.
3. The Deputy Chief Administrative Officer (P)
Office of the JS (Training) and Chief Administrative
Officer
C-2, Hutments Govt. of India, Ministry of Defence
DHQPO, New Delhi – 110011.

....Respondents

(By Advocate : Mr. Rajinder Nischal)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

This Review Application was earlier heard by the coordinate Bench of this Tribunal and the same was dismissed vide Order dated 1.10.2018 with the following directions:-

“6. We are in agreement with Mr. Nischal that no liberty has been granted by the Hon’ble High Court to the original applicant to prefer this RA. More so, the order of the Tribunal has already been challenged by the original applicant in the Hon’ble High Court in *ibid* WP(C).which is not yet decided.

7. In view of this, we are of the opinion that there is no need to consider this RA at this stage. Needless to say that since the issue is already ceased with Hon’ble High Court, it would be appropriate for all concerned parties to await the outcome of Writ Petition.”

2. Thereafter when Writ Petition No.11248/2017, already pending before the Hon’ble Delhi High Court against the Order passed by this Tribunal in OA No.3829/2014, came up for hearing on 9.1.2019, the Hon’ble Delhi High Court passed the following orders:-

“Counsel for the petitioner has tendered in Court the order dated 01.10.2018 passed by the Tribunal in R.A. No. 32/2018, preferred by the petitioner in consequence of the order dated 19.12.2017. The Tribunal has dismissed the said Review Application on the premise that no liberty had been granted to the petitioner to prefer the Review Application.

In the writ petition, Ground B and C taken by the petitioner read as follows:“

“B. BECAUSE arguments addressed were confined to the limited aspect of remanding the matter back to the department for revisiting the Revision Order in the light of the law of acquittal as has been laid down by the Hon’ble Supreme Court of India in matter *G.M. Tank v. State of Gujarat*, 2006 SCC (L&S) 1121 and others.

C. BECAUSE the Petitioners had reserved their right to argue the matter on merits on a later date to which the learned Tribunal agreed before the start of arguments on technical aspect.”

Thus, the submission of the petitioner before this Court was that though the argument before the

Tribunal was confined to the limited aspect of remanding back the matter to the Department for re-visiting the Revision Order in the light of the judgment of the Supreme Court in **G.M. Tank v. State of Gujarat, 2006 SCC (L&S) 1121 and others**, the Tribunal had proceeded to dispose of the Original Application on merits, even though the merits were not argued by the petitioner before the Tribunal.

This aspect is something that only the Tribunal can answer. It is in this light that the petitioner made a statement that he would prefer a Review Petition before the Tribunal and, consequently, the matter was adjourned to 16.05.2018.

Strictly speaking, it is correct that this Court had not vested the right to the petitioner to prefer a Review Petition. This Court had merely recorded the submission of the learned senior counsel appearing for the petitioner that the writ petition may be adjourned to enable the petitioner to avail a Review Petition before the Tribunal to seek review of the order dated 20.03.2017. However, when considered in the aforesaid light, we are of the view that the Tribunal should have proceeded to consider the Review Petition on its merits rather than rejecting the same only on the ground that this Court had not granted liberty to the petitioner to prefer the Review Application. To prefer a Review Petition, no liberty is required to be granted by this Court as that remedy is available to the petitioner under law.

Consequently, we set aside the order dated 01.10.2018 passed by the Tribunal in RA No. 32/2018 and restore R.A. No. 32/2018 before the Tribunal. The said Review Application shall be heard and disposed of on merits by the Tribunal.

In case, the petitioner is still aggrieved, it shall be open to him to avail of such remedies as are available to him in law. In the light of the facts and circumstances of the case, the issue of limitation shall not arise at the hearing of the Review Application. The Review shall be heard on the merits of the Review Application.

The petition stands disposed of in the aforesaid terms.”

3. In the aforesaid facts and circumstances, the present Review Application is listed today before this Tribunal and accordingly, this Tribunal heard learned counsel for the parties and perused the pleadings available on record.

4. By filing the present Review Application, the review applicant is seeking review of the Tribunal's order dated 20.03.2017 in OA 3829/2014 along with other connected OAs on the ground that :

“the above OA came up for hearing before the Hon'ble Tribunal on 7.3.2017 and arguments addressed on the said date of hearing were confined to the limited aspect of remanding the matter back to the department for review in light of the law of acquittal as has been laid by the Hon'ble Supreme Court in *G.M. Tank Versus State of Gujarat*, 2006 SCC (L&S) 1121 and other judgments. It was repeatedly submitted that if the Hon'ble Tribunal did not agree to remand the matter back for reconsideration of Revision, the petitioners would address argument on merits of the Enquiry proceedings. It is relevant to submit that the Hon'ble Tribunal then reserved the judgment on this limited aspect and owing to the said submissions the learned senior counsel appearing for the petitioner did not argue their case on merits at all and reserved her right to argue the matter on merits on a later date. If need be.”

5. During the course of hearing, learned counsel for the review applicant reiterated the aforesaid averments. On the other hand, learned counsel for the respondents submitted that the judgment of the Hon'ble Supreme Court in the case of ***G.M. Tank Versus State of Gujarat*** (supra) relied upon by the applicant has already been discussed in the Order under review and the Order under review was passed in accordance with law. The contention of the applicant that his case should

have been remanded back to the concerned authority for reconsideration of his Revision has no legs to stand as the Tribunal cannot decide the matter as per the convenience of the litigant.

6. Having regard to the submissions of learned counsel for the parties, we found that since the present Review Application is not based on any error apparent on the face of record, in fact, the review applicant is questioning the conclusion arrived at by this Tribunal in the said Order and if we agree to review applicant's prayer, we would be going into the merits of the case again and re-writing another judgment of the same case. By doing so, we would be acting as an appellate authority, which is not permissible in review. In the case of ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma***, [AIR 1979 SC 1047], the Hon'ble Supreme Court has observed as follows:-

"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 is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive 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 power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

Again in the case of ***Ajit Kumar Rath vs. State of Orissa and others***, 1999 (9) SCC 596, the Hon'ble Supreme Court has observed as follows:-

"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.**

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."

[Emphasis added]

In the case of **Gopal Singh vs. State Cadre Forest Officers' Assn. and others**, (2007 (9) SCC 369), the Hon'ble Supreme Court observed as follows:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

7. Thus, on the basis of the above citations and observations made hereinabove, we come to the conclusion that it was not open to the review applicant to question the decision taken by this Tribunal. In fact, the applicant could have only pointed out any error apparent on the face of record, which has not been done in any of the grounds taken in the Review Application. As such this Review Application is devoid of merit and the same is accordingly dismissed.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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