

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.82/2017
OA No.2662/2015
MA No. 1045/2017
MA No. 1521/2016**

New Delhi this the 28th day of January, 2019

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

Shri Gunjan Prasad,
R/o Sh. Tarkeshwar Prasad,
Working as Income Tax Settlement Commissioner,
Lok Nayak Bhawan, New Delhi - Applicant

(None)

Versus

Union of India,
Through its Secretary/CBDT,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi - Respondent

(By Advocate: Mr. MS Reen)

ORDER (Oral)

MS. NITA CHOWDHURY:

Nobody appeared for the applicant. Hence, we proceed with the matter under Rule 15 of the CAT (Procedure) Rules, 1987. We heard the learned counsel for the respondents

2. The facts, in brief, are that while deciding the Original Application (OA) bearing No.2662/2015, this Tribunal considered all the issues raised by the Review Applicant and dismissed the same on 27.02.2017 on merits in which the following orders were passed:-

“16. A perusal of above mentioned judgments shows that these judgments are not of any help in the present OA as the issues discussed and decided in those cases are quite different.

17. In R.L. Butah (*supra*), the Hon'ble Supreme Court has held that adverse remark in confidential report need not contain specific instances on which such remark was based. The affected employee does not have right to hearing unless as a result of specific incidence, warning or censure is issued to such employee.

18. The ratio of this judgment is squarely applicable to the remarks of the Reviewing Authority in the APAR of the applicant under reference as the Reviewing Authority had mentioned certain factual positions according to her perception for which it was not necessary to consult the Members and Vice President of ITAT as contended by the applicant.

19. It is noted that the appeal filed by the applicant has not yet been decided by the Competent Authority, however, it is an admitted fact that the officer who was the Reviewing Authority at that time has already superannuated. Therefore, the remanding of the matter back to the respondents to decide the appeal when the then Reviewing Authority is no more in service, will be a futile exercise. The OA has, therefore, been examined on merits and in view of the foregoing discussion and reasons, I do not find any merit in the OA. The OA is, accordingly, dismissed as such."

3. Now the Review Applicant has filed the present RA bearing No.82/2017 for reviewing the indicated order, mainly on the grounds which have already been considered by this Tribunal while dismissing the OA.

4. It is well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed or *made on account of some mistake or error apparent on the face of the*

record. It is now well settled principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parson Devi and Others vs. Sumitri Devi and Others*** (1997) 8 SCC 715, ***Ajit Kumar Rath Vs. State of Orissa***, (1999) 9 SCC 596, ***Union of India Vs. Tarit Ranjan Das*** (2003) 11 SCC 658 and ***Gopal Singh Vs. State Cadre Forest Officers' Association & Others*** (2007) 9 SCC 369.

5. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another*** (2008) 8 SCC 612. Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

- “(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 of 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”.

6. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicant has not pointed out any error apparent on the face of record warranting a review of the order dated 27.02.2017.

7. In the light of the aforesaid reasons, as there is no apparent error on the face of record, hence no ground is made out to entertain the present Review Application, which is accordingly dismissed. All the pending MAs also stand dismissed. No costs.

(S.N. TERDAL)
MEMBER (J)

(NITA CHOWDHURY)
MEMBER (A)

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