CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

RA No. 20 of 2012
(OA No. 518 of 2010)

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)

1. Union of India represented through CPMG, Odisha Circle, Bhubaneswar.
2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar.
3. Inspector of Posts, Bhubaneswar South Sub division, Bhubaneswar.

.....Review Petitioners.
(Opposite parties in OA)

VERSUS

Badrinarayan Dash, S/o Late Sadasiva Dash, At/PO – Kolhana, Via – Balanga, Dist. – Puri.

.....Opposite party.
(Applicant in OA)

For the applicant : Mr.L.Jena, counsel

For the respondents: Mr. N.R.Routray, counsel

Heard & reserved on : 7.2.2019 Order on : 15.2.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This Review Application (in short RA) has been filed against order dated 29.6.2012 of the Tribunal passed in OA No. 518/2010. The RA was filed on 30.7.2012, which is within time as per the rule 17 of the CAT (Procedure) Rules, 1987. The Review applicants are the respondents in the OA No. 518/2010 (to be referred hereinafter as 'respondents') and the Review respondents are the applicants in the OA (to be referred hereinafter as 'applicant').

2. The facts in brief are that the applicant in the OA No. 518/2010 was working as Gramin Dak Sevak (in short as GDS), who had filed the OA with prayer to direct the respondents to pay the minimum of the pay scale for the Postman w.e.f. 5.1.2006 when he performed the duty of a Postman as per the order of the respondents. After hearing the parties, the Tribunal vide the

impugned order, held that the applicant was entitled for the minimum of pay scale for a Postman for the period he had worked as a Postman. The respondents have filed this RA on following grounds:-

(i) Maximum duty hours of a GDS is 5 hours per day. For the applicant, it was assessed that the work hour was 2 hours and 51 minutes. Under the rules applicable for the GDS i.e. GDS (Conduct and Employment) Rules, 2001, there is no provision for the GDS to avail the benefit of a postman.

(ii) The applicant, vide the order dated 26.12.2005 was asked to manage the delivery work of another post office (i.e. at Balanga) in lieu his work as GDS in Nuasantha office and the applicant will be entitled for TRCA for his work to be paid in Balanga post office. The CPMG approved the said deployment under the matching and saving scheme vide order dated 6.1.2004 (Annexure-R/3). Hence, the redeployment of the applicant was as a GDS.

(iii) These material and documents placed by the respondents have not been taken into consideration and Tribunal has overlooked such facts, while passing the impugned order.

3. We heard learned counsel for the rival parties. Mr. L. Jena, learned counsel for the respondents submitted that the applicant was given the responsibility of delivery work in Balanga vide order dated 26.12.2005, but he filed the OA claiming minimum of pay scale for a postman in 2010, after a long delay. It was also submitted that the impugned order is violative of the rules applicable for the GDS and that for Balanga post office, there was no post of Postman. Hence, paying the minimum of the pay scale as per the order of the Tribunal is not permissible under the rules.

4. Review of the order of this Tribunal can be taken up under the section 22(3)(f) of the Administrative Tribunals Act, 1985 read with the Rule-1 Order no 47 of the CPC, which specifies limited grounds for permitting the review. Hon’ble Apex Court in a number of cases has held that the review cannot be resorted to get a different interpretation or decision from what is mentioned in the impugned order. The Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC) states as under:-

"1. Application for review of judgement
(1) Any person considering himself aggrieved-
(a) by a decree or order from which an appeal is allowed, but from 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 judgement to the Court which passed the decree or made the order.
(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.
[Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.]"

5. Hon'ble Supreme Court considered the law in regard to the review in the case of **Kamlesh Verma v. Mayawati And Others** reported in 2013 AIR SC 3301 and it was held as under:-

"19. 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 cpc. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.
Summary of the principles
20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
20.1 When the review will be maintainable:
(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.
The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. JT 2013 8 SC 275
20.2 When the review will not be maintainable:
(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
(ii) Minor mistakes of inconsequential import.
(iii) Review proceedings cannot be equated with the original hearing of the case.
(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
(vi) The mere possibility of two views on the subject cannot be a ground for review.
(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

6. In the case of **Board of Cricket Control of India vs. Netaji Cricket Club reported in AIR 2005 SC 592**, Hon'ble Supreme Court has held as under:-

"Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

It is true that in **Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulose Athanasius and Others [(1955) 1 SCR 520],** this Court made observations as regard limitations in the application of review of its order stating :

"Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule.", but the said rule is not universal.

Yet again in Lily Thomas (supra), this Court has laid down the law in the following terms:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error." (Emphasis supplied)

It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own

mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake."

7. In **Ajit Kumar Rath v. State of Orissa (1999) 9 SCC 596**, Hon'ble Apex Court reiterated that power of review vested in the Tribunal and held as under:-

"30. 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.

31. 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."

8. In the case of **Inder Chand Jain (Dead) through Lrs. Vs. Motilal (dead) through Lrs. reported in (2009) 14 SCC 663,** Hon'ble Apex Court held as under:-

"10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India this Court held : (SCC p. 251 para 56)

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise."

9. It is clear from the provisions of law and ratio of the judgments of Hon'ble Apex Court discussed above that Review of the order of this Tribunal is permissible only if there is a new fact which did not come to the notice despite due diligence at the time of consideration of the OA and if there is any apparent error or mistake apparent on the face of the record, or any other related reason. The ground taken in this Review Application that the impugned order of the Tribunal is not in accordance with the rules and the post of postman is

not available for the post office in question, are not the valid reasons to justify reviewing the impugned order, as these cannot be treated as error apparent on the face of the record. It is also stated in the Review Application that some of the documents placed in the OA have been overlooked by the Tribunal while passing the impugned order. To justify the review under law, it is necessary to show that the mistake as mentioned is obvious and apparent on the face of the record. If the review is sought on the ground of a mistake of law or fact which is not apparent on the face of the record, then it cannot be a valid ground for review and the aggrieved party can pursue other remedy as would be permissible under law.

10. Learned counsel for review applicants has filed a copy of the judgment of Hon'ble Apex Court in the case of Union of India & Another –vs- International Trading Co. & Another, reported in AIR 2003 SC 3983. The ratio of the decision in this cited case is that a benefit which was extended wrongly to a person cannot be a justification for repetition of wrong action in another case taking help of the Article 14 of the constitution of India. Learned counsel for the review applicant had challenged the impugned order of the Tribunal which had referred to the benefit of minimum pay scale/salary to some other GDSs in other cases, which are considered to be wrongly given by the respondents It was required on the part of the OA respondents to take such ground in the OA. Such a ground cannot be the valid ground for reviewing the impugned order as discussed earlier.

11. In view of the reasons mentioned in in the preceding paragraphs, we are of the opinion that no valid ground has been made out by the Review applicants to justify review of the impugned order dated 29.6.2012 of the Tribunal passed in OA No. 518 of 2010. The Review Application is accordingly, dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath