(Under Circulation)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Sitting at Nainital)
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(THIS THE 10th DAY of July, **2019**)

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Civil Misc. Review Application No. 331/00019/2019
In
Original Application No. 331/00951/2017.

Kundan Lal Kararha, S/o Late Shri Jagat Ram Kararha, Aged 76 years, House No. 27, Street No. 4, Ashirwad Enclave, Dehra Dun - 284001.

Applicant

VERSUS

1. Union of India through the Secretary, Department of Science and Technology, Ministry of Science and Technology, Technology Bhawan, New Mehrauli Raod, New Delhi - 110016.

2. The Surveyor General of India, Survey of India, Hathibarkala Estate, Dehra Dun - 248001.

3. Deputy Surveyor General of India, Hathibarkala Estate, Dehra Dun - 248001.

........Respondents

Advocate for the Applicant :- Shri Ram Prasad
Advocate for the Respondents:-

O R D E R
(Delivered by Hon'ble Ms. Ajanta Dayalan, AM)

The instant Review Application has been filed by the applicant Kundan Lal Kararha under Rule 17 of CAT (Procedure) Rules 1987 read with Section 22(3)(f) of Administrative Tribunals Act 1985 against the order dated 26.03.2019 (Annexure M-1) passed by this Tribunal in OA No. 951/2017 (Kundan Lal Kararha Vs. U.O.I. & Ors).

2. The applicant has pleaded several grounds for review of order dated 26.03.2019. Though the applicant has pleaded several grounds, the mere perusal of the Review Application makes it clear that he is basically trying to re-argue his case and reach a different conclusion

than the one reached by the Tribunal. There is no 'error apparent' on face of the record that he has pointed out. He is basically relying on long-winded arguments to substantiate his case.

3. The first ground of review itself given by him is 'the Hon'ble Tribunal has not considered the basis of the Original Application (O.A.) and as such there occurred a grave mistake in delivering the Judgment and Order and hence there is miscarriage of justice'. Such general statements themselves show the tenor of the whole Review Application.

4. Elsewhere, in the Review Application (para 13), he has stated that the Tribunal has erred in holding in the judgment dated 26.03.2019 that the promotion cannot be resorted to with retrospective effect. In fact, as is obvious from para 10 of the order, this Tribunal has held that instructions prescribing detailed norms for grant of revised pay scale to Executive Engineer and Superintending Engineers are of the year 2000 and these can be applied only prospectively and not retrospectively. We have not talked of specific promotion but have only stated that the norms laid down in year 2000 can be applied prospectively and not retrospectively. It is settled law that unless the competent authority itself decides the order to be applied retrospectively and this is indicated clearly in the order itself, the instructions and the orders are to be applied prospectively and not retrospectively. There was nothing in the OA or even during arguments when the applicant showed any specific provisions in the OMs of 2000 that they were to be applied retrospectively. In the absence of such specific indication in the OMs, the conclusion reached by the Tribunal was correct. Even in the Review Application, the applicant is not showing any such specific provisions. The Tribunal has not discussed giving retrospective effect to his promotion and has nowhere put a bar on his promotion or ante-dating of his promotion prior to his retirement. It has only stated that new norms

for such promotions can apply only prospectively. The applicant has also tried to argue that 5th Central Pay Commissions' recommendations also came into force with retrospective effect from 01.01.1996 – conveniently failing to mention that these orders clearly contained specific date with effect from which the orders were to come into effect.

5. The applicant has thereafter again gone on to argue about various aspects of the case without showing any error apparent on the face of record that justifies review.

6. We note that the Hon'ble Apex Court in case State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612 has interpreted the scope of review and, considering the catena of previous judgments mentioned therein, the following principles were culled out for review of 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.
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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 specified grounds.
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> (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).
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> (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
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> (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.
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> (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".

7. In the same case, Hon'ble Supreme Court has further held as under:

" 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."

8. Hon'ble Supreme Court in **Andhra Pradesh State Road Transport Corporation Vs. Abdul Karim - 2007 (2) Scale page 129** has held that the review application cannot be lightly entertained. It should be entertained only when there is manifest error which crept up in the judgment resulting in serious miscarriage of justice.

9. Further, the review application cannot be entertained on the grounds which were already considered in the OA. In the case of **Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301**, Hon'ble Supreme Court has held as under:

"18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. ……………………….

10. Review proceedings are thus not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 under Rule 1 of CPC. These are also not an opportunity for re-arguing the matter to reach a different conclusion. In review jurisdiction, mere disagreement

with the view of the judgment cannot be the ground for invoking the same. The parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible.

11. In view of the limited scope in Review Application as discussed above, as well as the facts that no error apparent on the face of record has been pointed out by the applicant and that rather the applicant is trying to re-argue his case and reach a different conclusion than the one reached by the Tribunal, we do not find much merit in the Review Application.

12. The Review Application is, therefore, dismissed being devoid of merit. No costs.

MEMBER (J) MEMBER (A)

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