(2018) 05 CAT CK 0030

In the Central Administrative Tribunal

Case No : Review Application No. 80 Of 2018, Miscellaneous Application No. 2197, 2198, 2199 Of 2018, Original Application No. 998 Of 2016

General Manager And Ors — APPELLANT

Vs

Mohd. Salim Khan — RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(3)(a), 22(3)(b), 22(3)(c), 22(3)(d), 22(3)(e), 22(3)(f), 22(3)(g), 22(3)(i)

Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1

Citation : (2018) 05 CAT CK 0030

Hon'ble Judges : K.N. Shrivastava, Member (A)

Bench : Single Bench

Final Decision : Dismissed/Disposed Of

Judgement

MA No.2197/2018

In view of the reasons mentioned in the MA and in the interest of justice delay of 49 days in filing the RA is condoned. MA is allowed.

RA No.80/2018

1. This Review Application (RA) has been filed by the review applicants, who were respondents in OA, seeking review of this Tribunal's order dated 16.02.2018 in OA No.998/2016. The Tribunal vide the ibid order disposed of the OA in the following terms:

"i) The respondents shall pay retiral dues to the applicant strictly in terms of Annexure A-2 particulars of pensioner. Since the applicant has received certain payments towards DCRG and leave encashment, the differential amount in regard to these two items shall be paid to him. This shall be done within a period of two months from the date of receipt of a copy of this order. The applicant, on his part, shall give an undertaking to the respondents that he shall return any excess payment made to him after re-verification of his leave account establishes such excess payment.

ii) The respondents shall get the leave account of the applicant re-verified by the Divisional Manager (Finance) and Divisional Personnel Manager afresh. The verified leave account shall be shared with the applicant. In case it is decided that the applicant was not entitled for the amounts indicated in Annexure A-2 particulars of pensioner towards DCRG and leave encashment, he shall be obliged to pay back the differential amount to the Department within four weeks."

2. The review applicants have pleaded the following important grounds for seeking review of the Tribunal's order dated 16.02.2018 in OA No.998/2016.:

i) There is apparent error on the face of the order/judgemnt dated 16.02.2018, in as much as vide the order dated 16.02.2018 this Tribunal has directed in para-9 that respondents shall pay retiral dues to the applicant strictly in terms of Annexure A-2 to the OA without considering the fact that the said Annexure is about the amount admissible to the retiring employee, which is subject to legal recoveries to be made therefrom.

ii) It has escaped notice of this Tribunal that it has specifically been asserted by the respondents in para-6 of their reply to the OA that payment of Commercial Debits of Rs.10,000/- withheld was released to him on 5.10.2016 after clearance from Commercial Department.

iii) The avermens made in para-5 of the reply of the respondents to the OA that RELHS subscription of Rs.24,240 is mandatorily required to be recovered in view of the Retired Employees Liberalised Health Scheme 1997 and hence the payment has correctly been made.

iv) It could not be considered by this Tribunal while passing the order under review with directions to the respondents to make the payment strictly in terms of Annexure A-2 in as much as the recovery of Rs.5,372 is required to be made in view of increment put back in as much as where there is absence excess to the leave due to the employee, wither the employee will have to be declared unauthorisedly absent or while regularizing the leave, as leave without pay the increment will have to be put back.

v) The leave of the applicant has been considered by the competent authorities in accordance with the relevant rules. However, if the applicant (respondent in RA) is having any grievance against the same, the same could have been raised by him before the competent authority for reconsideration and if found necessary, the respondents may be required to share the details of the leave, reason for sanctions and if at all any due leave had not been paid, the occasion could have come for payment towards leave encashment. However, this Tribunal has directed the respondents first to make the payment to the original applicant and thereafter settle the leave due afresh by sharing the details with the applicant.

3. A mere reading of these grounds and other points raised in the RA would give

an impression as though the review applicant has tried to re-argue the case. As a matter of fact, the RA appears to be in the nature of an appeal, which is not permissible under law. The error pointed out by the review applicants cannot be termed as error apparent on the face of order as it is general rule that payment to a retired government servant is made strictly on the basis of the PPO issued. The grounds raised herein were also raised by the review applicants in the OA. If in the opinion of the review applicants, the order is erroneous, remedy lies elsewhere and certainly review is not the remedy.

4. The sine qua non for reviewing any order of the Tribunal is existence of an apparent error on the face of the record. The review applicants have failed to point out any error apparent on the face of the order under review.

5. 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.

(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."

6. For the reasons discussed in the foregoing paras, I do not find any merit in the RA. Accordingly, the RA is dismissed in circulation.

7. Consequently, MA Nos.2198 and 2199 of 2018 also stand disposed of.