
(2018) 08 CAT CK 0108

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 1700 Of 2018, Review Application No. 0064 Of 2018, Original Application No. 0611 Of 2012

P S Bhandari And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-08-2018

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
Constitution Of India, 1950 — Article 13(3)(a), 14, 16(1), 77

Citation : (2018) 08 CAT CK 0108

Hon'ble Judges : K.N. Shrivastava, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Mukesh Chandra Kukreti, A.K. Behera, Naresh Kaushik, Rohit Sehrawat, Hanu Bhaskar

Final Decision : Dismissed/Disposed Of

Judgement

K.N. Shrivastava, Member (A)

1. The review applicants filed OA No.611/2012 seeking the following relief:

"8.1 Allow the present OA and quash and set aside the Central Secretariat Service Rules, 2009 notified vide G.S.R. 140 (E) Notification dated 27th February, 2009, as a whole, including repealing Rule 24 thereof, by declaring it was discriminatory, manifestly unreasonable, void ab initio, stillborn and ultra vires the provisions contained in Articles 14 and 16 (1) of the Constitution of India and also being violative of Article 77 of the Constitution of India and the Government of India (Transaction of Business) Rules, 1961 and restrain the Respondents from enforcing them and grant all consequential reliefs to the Applicants."

2. The Tribunal vide order dated 15.03.2018, after considering the pleadings, documents and the submissions made by the learned counsel for the parties

dismissed the OA, by recording as under:

"17. In the conspectus of discussions in the foregoing paragraphs, we are of the view that the Central Government has taken a well thought out policy decision to maintain CSS and CSSS cadres as completely separate and distinct from each other. While doing so, the Central Secretariat Manual of Office Procedure has also been taken into account by the Government. Such a decision cannot be subjected to judicial review. As noticed hereinabove, the rule-making powers of Central Government cannot be questioned. The Central Government has replaced the CSS Rules 1962 by CSS Rules 2009. The 2009 Rules have made it clear that the post of US is a promotional post for SO of CSS. The scope of lateral entry of CSSS officers to it has been thus done away with. Hence, we do not find any merit in this O.A. It is accordingly dismissed."

3. Aggrieved by the order dated 15.03.2018, the review applicants have filed the instant Review Application (RA), under Section 22 (3) (f) of the Administrative Tribunals Act, 1985, seeking review of Tribunal's dated 15.03.2018 passed in the said OA.

4. The review applicants, inter alia, have pleaded the following grounds in the RA seeking review of order dated 15.03.2018:

4.1 The order dated 15.03.2018 passed by this Hon'ble Tribunal apparently suffers from errors which are apparent on the face of the record, particularly as they are "error/s of law" and thus have rendered the order under review liable to be reviewed and consequently recalled and set aside.

4.2 There is a grave "error/s of law" apparent on the face of the record/order dated 15.03.2018, insofar as due to inadvertence this Hon'ble Tribunal have not appreciated on merits the written submissions dated 15.05.2017 nor the synopsis of judgments dated 24.05.2017/proposition of law and the judgments relied upon by the applicants.

4.3 Mistake of facts and grave error of law apparent on the face of the record have crept in, vitiating the order under review insofar as the Hon'ble Tribunal erred in not appreciating and not deciding the specific grounds taken in written submissions by specifically referring to the materials contained therein.

4.4 Mistake of facts and a grave error of law apparent on the face of the record have crept in, insofar as this Hon'ble Tribunal gravely erred in not appreciating the conflicting view taken by a Coordinate Bench of this Tribunal vide order dated 25.07.2011 in OA No.2674/2009 and order dated 20.10.2011 in RA No.308/2011 in OA No.2674/2009.

4.5 The Hon'ble Tribunal gravely erred in not appreciating the law laid down by Hon'ble Apex Court in the cases of Om Prakash Shukla v. Akhilesh Kumar Shukla and others, [1986 (Supp) SCC 285], State of Maharashtra etc. v. The Central Provinces Manganese Ore Co. Ltd, [(1977) 1 SCC 643] and Suraj Prakash Gupta and others v. State of J&K and others, [(2000) 7 SCC 561] etc..

4.6 The Hon'ble Tribunal failed to appreciate, delve into and decide the legal and constitutional rights of existing feeder grade incumbents/applicants/similarly situated eligible officers to be considered for promotion to Grade I (Under Secretary) of the CSS along with the Section Officers of Select Lists 1994 to 1998, contrary to the admitted relevant material legal principles and constitutional position taken by respondent no.4, UPSC in its short reply dated 20.04.2012.

4.7 There is a manifest error of law apparent on the face of the record, insofar as This Hon'ble Tribunal in paras 11 to 17 of the order under review has gravely erred in not appreciating the well settled legal position that if a statute i.e. Rule 12 (2) of CSS Rules, 1962 and CSS (Promotion to Grade I and Selection Grade) Regulations, 1964 in force as on 19.12.2001 and February 2002 in the instant case, has been passed for one particular purpose, a court of law will not countenance any attempt which may be made to extent the operation of the Act to something else which is quite foreign to its object and beyond its scope and contrary to this well settled legal position even though it has selectively not noticed in para 2.11 of the order under review.

4.8 The order under review stands vitiated insofar as the view taken by the Hon'ble Tribunal in para 13 of the order under review that the Central Government has been absolutely fair to both CSS and CSSS cadres in regard to their service prospects based on comparison of same scales of pay of posts of CSS and CSSS is contrary to Union Cabinet decision dated 14.08.2008 published in Ministry of Finance, Department of Expenditure Resolution No.1/1/2008-IC dated 29.08.2008 having statutory force and law in terms of Article 13 (3)(a) of the Constitution.

5. We have heard applicant no.6 in person and learned counsel for the respondents and perused the RA. The scope of review lies in a narrow compass as prescribed under Order XLVII, Rule (1) of CPC. None of the grounds raised in the RA brings it within the scope and purview of review. It appears that the review applicants are trying to re-argue the matter afresh, as if in appeal, which is not permissible. If in the opinion of the review applicants the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, the review applicants cannot be allowed to raise the same grounds, which were duly considered and rejected by the Tribunal while passing the order under review. Existence of an error apparent on the face of the record is sine qua non for review of the order. The review applicants have failed to bring out any error apparent on the face of the order under review.

6. 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 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 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."

7. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed.

8. In view of the above, no separate order is required to be passed in MA No.1700/2018, which accordingly stands disposed of.