

(2018) 12 CAT CK 0039

In the Central Administrative Tribunal

Case No : Review Application No. 062, 00063 Of 2018 In Original Application No. 062, 0009 Of 2018

Syed Meirajul Yasin

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 17
Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1
Administrative Tribunals Act, 1985 — Section 22(3)(f)

Citation : (2018) 12 CAT CK 0039

Hon'ble Judges : L. Narasimha Reddy, J;P. Gopinath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Review Application has been filed under Rule 17 of CAT (Procedure) Rules, 1987 in the O.A No. 062-0009-2018 seeking review of the order passed by this Tribunal on 17.09.2018.

2. A perusal of order dated 17.09.2018 would show that all the relevant contentions raised by both sides and decisions cited on the point were considered by this Tribunal and order dated 17.09.2018 was passed as follows:-

"6. The impugned order dated 12.10.2017 (Annexure Q), indicates that the applicant has been shown as having been promoted as Junior Stenographer w.e.f. 1.6.1992. Thus, grant of 1st financial upgradation was on the premise that the applicant had not got any promotion. That was not according to record as such when it came to notice of the respondents that an administrative error had taken place, they withdrew that and re-fixed the pay of the applicant. Considering the facts and matter on record, we are of the view that the respondents have not committed any error. The applicant has been shown to have been promoted since 1992 itself but it never challenged those orders which showed his position as having been promoted as Stenographer. In any case, the

post was merged with UDC and now the applicant is in the cadre of UDC. Thus, he cannot be granted any benefits. Law is well settled that an administrative error can always be corrected by the authorities. In the case of RAM AWADH PRASAD V. UNION OF INDIA, 1987 (3) CAT 48, it was held that it is well accepted maxim of law that an administrative error can always be corrected. This can be done without giving opportunity to show cause notice, if the order has been carried out or it has not resulted in accruing any legal right. In so far as natural justice is concerned, in S.K. KAPOOR V. JAG MOHAN, AIR 1981 SC 136, it has been held by Hon'ble Apex Court, that where on admitted or undisputed fact, only one conclusion is possible and under the law, the court may not issue the writ to compel the observance of the principles of natural justice as it would amount to issuing a futile writ. Thus, we uphold the re-fixation of pay of the applicant on withdrawal of the benefit of ACP, and impugned order is upheld in that relevant connection.

7. However, if any amount has been paid in excess to the applicant, in pursuance of the grant of financial up gradations under the ACP Scheme, it is directed that the same shall not be recovered from him, as he is admittedly a Group C employee and there was no mis-representation on his part nor was any fraud attributed to him. In such like cases, the recovery of excess amount paid to an employee is not permissible, in view of law laid down by the Hon'ble Apex Court in the case of STATE OF PUNJAB VS. RAFIQ MASHI (WHITE WASHER), (2014) 8 SCC 883. 6 8. In so far as grievance of the applicant qua incorrect fixation of seniority as UDC or benefit, on the basis of his promotion as Junior Stenographer, is concerned, it would be open for him to agitate these issues by way of separate appropriate proceedings, as per rules and law. Pending M.A. for stay also stands disposed of. 9. The O.A. stands partly allowed upholding the re-fixation of pay but restraining the respondents from making any recovery, in the above terms. 10. The parties are, however, left to bear their own costs."

3. One of the grounds for filing this RA is that the respondents have created confusion by producing the documents which were not relevant to the case and that the documents produced by the applicant were not considered due to oversight by the Tribunal. Review applicant has further annexed some documents to fortify his plea to review the order dated 17.09.2018 passed in the OA No. 062-0009-2018.

4. The documents produced as Annexures to buttress the applicant's case in the Review Application are the same as were produced and considered while deciding the OA. Further, minutes of the DPC meeting dated 20.04.1992 in which applicant was promoted as Junior Stenographer, clearly states as follows:-

".....the following in-service candidates of RRIUM, Srinagar who fulfill all the requirements be considered for promotion/appointment." The DPC also records that due to the situation in the valley and the earlier application for the post becoming time barred, in-service candidates like the applicant were considered for promotion/appointment. It was a promotion as applicant who was a GDA in

scale of Rs. 950-1500 was promoted as Junior Stenographer in scale Rs. 1200-2040. Further, in Annexure II, RTI documents produced, applicant has placed the CCRUM letter dated 27.05.1992 wherein applicant's name appears at Serial No. 4 as follows:-

"4. Promotion of Shri Syed Merajul Yasin , GDA to the post of Junior Stenographer"

The applicant has neither challenged this appointment issued as early as 27.05.1992.

5. Thus, applicant is attempting a re-hearing on the same grounds as argued in OA and facts raised in RA were same as raised in OA and already considered. Moreover, applicant has already been given the relief of non-recovery of excess payment made, if any.

6. In Meera Bhanja (Smt) Vs. Nirmala Kumar Choudhary - (1995) 1 SCC 170 it was held that the scope of review is very limited. The court held:

"A review Application can be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. Re-appraisal of the entire evidence or error would amount to exercise of appellate jurisdiction which is not permissible by way of review application. This is the spirit of order XLVII, Rule 1 of CPC."

7. The Apex Court in State of West Bengal & Ors. v. Kamal Sengupta & Anr. - 2008 (2) SCC 735 has enumerated the principles to be followed by the Administrative Tribunals when it exercises the power of review of its own order under Section 22(3)(f) of the Administrative Tribunals Act, 1985. They are :

"(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 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 a 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."

8. This is a case where this Tribunal has considered all the aspects in detail in its order dated 17.09.2018. Virtually, no new point has been taken in the RA and applicant just wanted to have a rehearing of the entire case. Review application cannot be an appeal in disguise. As such we find no merit in the Review application. It is accordingly dismissed by circulation.