
(2019) 08 CAT CK 0094

In the Central Administrative Tribunal

Case No : Review Application No. 105 Of 2018, Original Application No. 2088 Of 2013, Contempt Application No. 443 Of 2018

Union Of India And Others

APPELLANT

Vs

Bishamber Dayal

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Administrative Tribunal Act, 1985 — Section 22(2)(f), 22(3)(a), 22(3)(b), 22(3)(c), 22(3)(d), 22(3)(e), 22(3)(f), 22(3)(g), 22(3)(h), 22(3)(i)
Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1

Citation : (2019) 08 CAT CK 0094

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Dr. Chaudhary Shamsuddin Khan, R.P. Sharma

Final Decision : Disposed Off

Judgement

S.N. Terdal, J

1. We have heard Dr.Chaudhary Shamsuddin Khan, counsel for review applicants/ Original respondents and Mr. R.P.Sharma, counsel for respondent/original applicant, perused the pleadings and all the documents produced by both the parties.

2. The applicant had filed OA No. 2088/2013 alleging that he was expecting more marks in paper -1 of Postman Examination, 2009 held on 18.11.2009. In the said examination, as per the result declared he had secured 22 marks out of 50 marks. The required minimum percentage of marks in the said paper was 45% i.e. 22.5 marks out of 50 marks. This Tribunal after hearing both the parties in detail, disposed of the said OA vide order dated 19.12.2017 directing the respondents to re-evaluate paper No-1 of the applicant by another examiner. The relevant portion of the order is extracted below:-

"13. We once again direct the respondents to re-evaluate Paper No. 1 of the

applicant by another examiner categorically pointing out the alleged discrepancies by the applicant. The final decision may be informed to the applicant by issue of a reasoned and speaking order. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

14. The OA stand disposed of in the above terms. No costs."

3. The respondents have filed present Review application seeking review of the above order. 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 considered and rejected by the Tribunal while passing the order under review.

4. Existence of an error apparent on the face of the record is sine qua non for reviewing the order. The review applicant has failed to bring 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 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 an error apparent on the face 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, we do not find any merit in the RA. The same is dismissed. Pending MA, if any, stands disposed of.