

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Officiating Chairperson & Member (J)

Case No. – RA 11 of 2022 [OA 335 of 2021]

Uttam Kumar Biswas -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order
01
10.11.2022

For the Applicant : Mr. A.K. Niyogi,
Ld. Adv.
For the State Respondent : Mr. D. Kole,
Ld. Adv.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536-WBAT/2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

Affidavit of service filed be kept on record.

The instant application has been filed praying for review of the order dated 23.09.2022 passed in MA 93 of 2022, MA 94 of 2022 as well as OA 335 of 2022, whereby the aforementioned MAs and OA were rejected on the ground that admittedly the applicant made a false declaration in the Verification Roll dated 25.01.2016, against the column, whether he was ever been convicted by the Court of any offence or charge-sheeted by the police in connection with any criminal proceedings, against which column, he mentioned 'Not Applicable' as well as 'no' whereas after police verification, it was found that one Charge-Sheet No. 329 of 2014 was submitted on 08.08.2014. However, at the time of hearing of the OA, the applicant had submitted that vide judgment dated 16.03.2017, he was acquitted. Therefore, he must be allowed to join the service. However, as the applicant was appointed provisionally vide letter dated 12.02.2016 with a clear stipulation that his appointment is provisional subject to receipt of satisfactory PVR and Medical Examination Report from the respective department and his answer to the query in VR was found false/wrong. Therefore, his provisional appointment was terminated. In that background, this Tribunal had rejected the MA as well as OA.

It is noted that "(I) In Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8) SCC 715], Hon'ble Supreme Court has held as under:-

'Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake

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or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".
[Emphasis added]

(II). In the case of State of West Bengal Vs. Kamal Kumar Sengupta [2008(8) SCC 612] Hon'ble Supreme Court has held as under:-

“The principles which can be culled out from the above noted judgments 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 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

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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 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."

(III). In a recent judgment, Hon'ble Apex Court in the matter of Union of India Vs. Sandur Manganeze Iron Ore Ltd. [2013 STPL (Web) 351 SC] has held that mere disagreement with a view of the judgment cannot be ground for interfering the same as long as points were already dealt with are answered, the

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parties are not entitled to challenge on the guise that alternative view can be taken.”

In the case of Kamal Kumar Sengupta (supra), the Hon’ble Apex Court has clearly stipulated that while considering an application for review, the Tribunal must confine its adjudication with reference to material, which was available at the time of final decision and 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 their knowledge and even after exercise of due diligence the same could not be produced before the Tribunal earlier.

In the instant review petition, the applicant has prayed for the review on the ground that subsequently he has found one undated letter and another letter dated 22.03.2017 enclosing the judgment to the Superintendent, Berhampore Correctional Home and praying for joining of service and has submitted that the order dated 23.09.2022 may be recalled and reviewed.

Heard the learned counsel for the applicant. From the perusal of these two documents, it is noted that one document is undated and unsigned and another document is with regard to acquittal order dated 16.03.2017 and praying that no case is pending against him in any Court of law. However, no receipt of that letters. Firstly, two documents enclosed for review of the order has no relevancy and non-receipted and one even not signed by the officer. Therefore, there is no scope for review of the order as there is no error apparent on the face of record and these documents are nor relevant.

Accordingly, the RA is **dismissed**.

CSM/SS

URMITA DATTA (SEN)
Officiating Chairperson & Member (J)