

Judgement

The instant application has been filed praying for review of the Judgment dated 08-07-2019 passed in OA No. 1006 of 2017.

2. As per the applicant, the father of the applicant died on 04-10-2002 and the mother of the applicant submitted an application for compassionate appointment on 13-12-2002 i.e. within the stipulated period but the said application was misplaced and could not be traced out at the time of filing of the said OA. However this Tribunal had dismissed the original application affirming the order of the authority by which he had rejected the claim of the applicant on the ground of delay in filing the application. The Counsel for the applicant has also referred one order dated 07-10-2015 passed in RA No. 5 of 2015 and has prayed for extension of benefit of the same.

3. However the Counsel for the respondent has prayed for rejection of the instant application as there is no mistake or error apparent on the face of the record as it cannot be said that the applicant was not aware of the said application, if it is true, at the time of hearing of the original application.

4. We have heard both the parties and perused the records.

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 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]

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 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."

In the instant case, the applicant had challenged the impugned reasoned order dated 06-06-2017 by which his application was rejected by the Addl. Chief Secretary on the following reasons :-

“ It appears that Shri Nilratan Barman had applied for the first time for compassionate appointment on 30-08-2007, which is almost five years later from the date of death of Late Kandura Barman. The petitioner could not produce any other document in support of his claim prior to 30-08-2007. No document has been produced in support of his mother’s claim also”

After considering the said observation, which was not controverted by the applicant in the original application, even at the time of hearing, we observed and dismissed the OA vide Judgment dated 08-07-2019, holding inter alia :-

“ In view of the above, it is clear that the respondent had dealt with the case of the applicant after considering all the issues as submitted by the applicant presently. Further, the main reason for rejecting the claim of the applicant is non-submission of application within proper time and it is also observed that applicant has not enclosed any documents to prove his claim that he had filed the application within a stipulated period of time. In view of the above, we do not find any reason to entertain the application. Accordingly, the application is dismissed being devoid of merit with no order as to cost”.

Therefore if it has to be accepted that the said application dated 13-02-2002 was not available/traceable at the time of filing the application or at the time of hearing, in that case the said fact should be known to the applicant at that point of time. If so, the applicant could have mentioned the said fact in his original application or could have submitted at the

time of hearing before the authority as well as before us. However, though the main ground of rejection of the application of the applicant was belated submission of application even then the applicant during the time of hearing never mentioned about such fact before this Tribunal.

Therefore as held by the Hon'ble Apex Court in the case of State of West Bengal Vs. Kamal Kumar Sengupta, mere discovery of new evidence is not sufficient ground for review. The party seeking review has also to show that such matter was not within his knowledge and even if exercise of due diligence, the said could not be produced before the Court also. However as observed above, the applicant cannot claim that he had no knowledge of filing of such application within time as claimed by him as his case was rejected by the authority clearly mentioning that even after granting opportunity, the applicant could not produced any other documents in support of his claim prior to 30-08-2007.

5. Further the order dated 07-10-2015 passed by our coordinate Bench is distinguishable as in the said case, the Court observed that **“We find that the documents filed together with the review application are not new documents. Those documents were existing at the time of hearing and the order was passed. No doubt, the documents annexed to that review application have great impact on the issue adjudicated by this Tribunal”**.

6. In view of the above, we do not find any reason to review our earlier order. Accordingly, the review petition is dismissed.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)