

Arvind Cairae and Others Vs. Union of India and Others

Arvind Cairae and Others Vs. Union of India and Others

SooperKanoon Citation : sooperkanoon.com/938210

Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-01-2011

Judge : The Honourable Mr. G. George Paracken, Judicial Member & the Honourable Dr. Veena Chhotray, Administrative Member

Appeal No. : R.A. NO.393 of 2011 IN O.A. 767 of 2009

Appellant : Arvind Cairae and Others

Respondent : Union of India and Others

Advocate for Pet/Ap. : For the Applicants: ----- For the Respondents: -----

Judgement :

By Dr. Veena Chhotray:

1. The Review Application No.393/2011 has been filed by the original applicants seeking a review of the Tribunal's Order dated 25.8.2011 dismissing the Original Application. This RA has been filed on 4th November, 2011 along with MA 3075/2011 for condonation of delay. On going through the reasons explicated in the MA for condonation of delay, the same are found to be unacceptable.

2. The applicants, working as Data Processing Assistants Grade III and II under the Ministry of Statistics and Programme Implementation, Government of India, through this OA, third in the series, were seeking absorption into the Subordinate Statistical Service with effect from the date of inception. Challenging the

respondents' office Memorandum dated 15.10.2008, passed in pursuance of the directions in the OA 812/2007 and rejecting the claims again, the present OA sought the following relief:

“8a. This Hon'ble Tribunal be pleased to direct the Respondents to issue the offer of option to the Applicants to be absorbed into the “Subordinate Statistical Service” as they absorbed in case of the employees of Field Operations Division working under the same organization i.e. National Sample Survey Organization i.e Respondent no.3 where the present applicants are also working w.e.f. date of inception of “Subordinate Statistical Service”.

On a detailed consideration of the facts adduced in the Original Application as well as advanced by the learned counsels on behalf of the parties, we had not found the claims in the OA as legally tenable and the OA dismissed as being devoid of merit.

3. The review has been sought raising the following grounds:-

There are apparent errors in the findings recorded by this Hon'ble Tribunal in its order dated 25.08.2011;

The Hon'ble Tribunal had taken views contrary to the decisions rendered by the Hon'ble Courts of contempt jurisdiction and thus ipso facto constitute apparent errors;

Certain documents that were provided by the Applicants to their advocate have not been placed on the record of the OA as found out on 17.10.2011;

Several contentions raised by the applicants in the OA have not been reflected or considered in the order dated 25.08.2011 (Annexure: RA-1);

Certain facts have come to the knowledge of the Review Applicants from the new Advocate they have engaged now for the Review Application, which was not in the realm of knowledge of the Applicants with due diligence earlier; and;

The Review Applicants have now procured documents which were used by the Hon'ble Tribunal for delivering its order dated 25.08.2011 (Annexure : RA-1).

4. On a perusal of the averments advanced in the RA, we discern a clear attempt on the part of the applicants for re-agitating the issues, which have already been finally decided by the Tribunal after a thorough consideration of the facts of the case as well as the law on the subject.

As regards submission of the letter dated 17.8.2011 by the respondents, it was on a specific direction by the Tribunal to the Respondents' counsel in the court itself in presence of the learned counsel for the applicants. Thus the grounds taken in the Review Application are beyond the scope of review as provided under the law.

5. It is settled proposition of law that the scope of review jurisdiction is extremely limited. It is neither a methodology for correction of what is claimed to be an erroneous order nor rehearing and re-agitation of issues. The Hon'ble Apex Court in its recent decision in *State of West Bengal and Ors Vs Kamal Sengupta and Anr*, (2008) S SCC 612, elaborated the scope of review jurisdiction of the Tribunal under Section 22 (3)(f) of the Act being akin/analogues to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC. Sub-paras (i) to (viii) of Para 35 of the aforesaid judgment laying down the basic principles, are extracted as here under:

“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.”

6. To conclude, the present RA is non-maintainable for the reason of not having been filed within the prescribed limitation period and no sufficient cause being shown for condoning the delay. Even substantively, the grounds raised are either re-agitation of issues or reliance on some new material which were not part of the pleadings in the Original Application.

In the instant case, the grounds for review adduced on behalf of the applicants can by no stretch of imagination be termed as an error apparent on the face of record. If a long process of reasoning is needed and different views are possible, as is the case here, it could not be a “self evident error”. Again mere discovery of a new and important matter is not a sufficient ground for review. It has also to be shown that such a matter could not be produced earlier despite exercise of due diligence. As per the settled law review jurisdiction does not permit either re-agitation of issues or correction of what is claimed to be an erroneous order. This does not fall within the narrow ambit of review jurisdiction.

Having carefully considered, we do not find the present case fit for review. The RA is dismissed hereby in circulation.