

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/01258/2019

DATED THIS THE 25TH DAY OF FEBRUARY, 2020

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V.SANKAR**

**...MEMBER(J)
...MEMBER(A)**

S.N. Vijay Kumar,
S/o Late S.K. Nagaraja,
Aged about 41 years,
R/at No.6, Lalbaugh,
Siddapura,J. C. Colony,
Jayanagar 1st Block,
Bengaluru-560 011.

... Applicant

(By Advocate Shri M. Narayanabhat)
V/s

1. Union of India,
Rep. By its Secretary,
Ministry of Steel and Mines,
Lok Nayak Bhavan,
2nd Floor, Khan Market,
New Delhi-110 003.

2.Geological Survey of India,
Rep. by its Director General,
27, Jawaharlal Nehru Road,
Fire Brigade Head Quarter,
New Market Area,
Dharmatala, Taltala,
Kolkata, West Bengal-700016.

3.Geological Survey of India,
Rep. by its Deputy Director General,
Airborne Mineral Surveys & Exploration Wing,
Vasudha Bhavan, Kumaraswamy Layout,
Bengaluru-560 078.

..Respondents.

(By Shri V.N. Holla, Standing Counsel for the Respondents)

ORDER (ORAL)**HON'BLE DR.K.B.SURESH ...MEMBER(J)**

Heard. The matter is said to be covered by our order in OA.No.725/2012 dated 13.01.2014 which we quote:

"ORDER (ORAL)**DR. K.B. SURESH, MEMER(J):**

Shri Vikram Roy, Director and Head of Office of the second respondents is present before me. He submitted that unknowingly a mistake had occurred whereby the applicant who had secured more marks than the selected candidates were not actually selected and appointed. That being so in the correctness of things, the applicant should be accommodated. He assures that if the matter is remitted back to him, he will do the needful. I am inclined to believe him. Proper appointment orders may be issued to the applicant so that they will be able to resolve this issue. This may be concluded within one month's time. All the original records to be returned to the respondents.

OAs are disposed of. No order as to costs.

2. We did not penalise the said officer when he came out and honestly admitted that several people with less marks than the applicant had been appointed in the selection. But then as a mark of accommodation, we had directed that let the applicant also be appointed as he has admittedly by the respondents secured more marks than the selected and appointed candidates. The names are given in page 11 of the OA, which we quote:

Sl.Nos.	Name	Sl.No. in Select List	Points Scored
01	Sreekant. P	20	38 Points
02	Ashok	21	37 Points
03	Manjula	22	37 Points
04	Prasannakumara	23	37 Points
05	Jyothi. G	24	37 Points
06	Shamsingh	25	37 Points
07	Krishna Rao. G	40	17 Points
08	Ponnuswamy	42	15 Points
09	Smt Gowramma	45	12 Points

3. This order was challenged in the Hon'ble High Court of Karnataka by the respondents in WP.No.11032/2014 and connected matters and vide order dated 17.03.2014 the Hon'ble High Court disposed of the matter holding that if at all the said officer has not made any such representation, then it is for him to file a Review. Thereafter, RA.75/2014 was filed in OA.725.2012, which was disposed of vide order dated 31.07.2014, which we quote:

"ORDER

Per: HON'BLE SHRI.G.SHANTHAPPA, MEMBER (J)

The above Review Application is filed by the respondents in O.A No.725/2012, under Section 22(3)(f) of the Administrative Tribunals Act 1985 read with Section 114 CPC, seeking the relief to set aside and quash the order dated 03.01.2014 made in O.A No.725/2012 and Review the order dated 03.01.2014 and post the matter for fresh consideration on merit in accordance with law, in the interest of justice.

2. We have heard the learned counsel for the parties.

3. Along with R.A, the applicants have filed M.A No.200/2014 under Section 21 of the Administrative Tribunal Act, 1985, read with Section 114 of CPC praying for condonation of delay in filing the Review Application in view of the order passed by the Hon'ble High Court dated 17.01.2014 in W.P No.11032/2014 and 12370/2014.

4. ORDERS ON M.A 200/2014

The reasons given by the applicants for condonation of delay are that they have obtained the certified copy of the order on 27.01.2014 and processed in the department to take a decision with regard to the order dated 03.01.2014 in O.A No.725/2012. The matter was entrusted earlier, to file W.P. W.Ps No.11032/2014 and 12370/2014 and filed before the Hon'ble High Court. On 17.03.2014 W.Ps were disposed of with liberty to file Review Application against the order dated 03.01.2014. In view of the direction of Hon'ble High Court dated 17.03.2014 the above Review Application is filed. Hence, there is no delay in filing R.A even if there is a delay, the same may be condoned.

5. Heard the learned counsel for the parties. The learned counsel for the respondent in R.A, vehemently argued and submitted that the Hon'ble High Court has not issued the direction to file R.A. The petitioners themselves have sought for withdrawal and the Hon'ble High Court permitted to withdraw the W.P with liberty to file R.A. Accordingly, statements made by the Review Applicants in M.A are not correct.

6. We have carefully considered the rival contentions and pleadings and perused the statements made in the affidavit, in support of M.A for condonation of delay. The delay was from the date of obtaining the order till the date of filing the W.P and disposed on 17.03.2014. The delay occurred is not willful, we accept the statements made in the affidavit. As contended by the respondent that the Hon'ble High Court has not directed the petitioners to file the R.A. We have carefully gone through the orders of the Hon'ble High Court, the learned

counsel for the petitioners requested the Hon'ble High Court, the request to permit him to withdraw the W.P with liberty to file R.A before the Tribunal was granted. The petitioners have established for condoning the delay. Accordingly, delay in filing the Review application is condoned. M.A is allowed.

7. ORDERS ON R.A NO.75/2014

The learned counsel for the Review applicants submits that Hon'ble Tribunal had considered the case of the respondent from 2005 to 10.10.2011. The Hon'ble Tribunal in the said order had clearly stated that the case of the respondent has not been considered on 02.02.2006 as respondent's father died on 20.05.2001. In view of the OM dated 05.05.2003, the case of the applicant cannot be considered beyond the three years of the death. The petitioners have not considered the case of the respondent in the Years 2006 & 2007. This Tribunal has dealt elaborately on all the aspects including the grievance of the respondent that a person who has obtained lesser marks has been appointed based on direction in O.A No.338/2009. The order dated 03.01.2014 was ready on 27.01.2014. Shri.Vikram Rai, Director & Head of Office after seeing order has stated that he did not agree for giving any of the appointments. He has stated that he agreed to consider the case of the respondent. The copy of order had been forwarded to GSI, Southern Region office at Hyderabad and also to Central Head quarters at Kolkata. On an enquiry with Shri.Vikram Rai, he had stated that the case of the respondent will be considered for compassionate appointment by the Compassionate Appointment Committee which is the recommending authority for compassionate appointments. He also stated that he did not agree for giving any appointments. The affidavit of Shri.Vikram Rai was also obtained, the same has been placed before Hon'ble High court in W.P No.11032/2014 and 12370/2014. Thereafter, on the basis of the opinion, the order dated 03.01.2014 was challenged before the Hon'ble High Court.

8. The Review applicants have contended the legal grounds on which the order has to be set aside. Shri.Vikram Rai, filed an affidavit that he has not agreed for giving any appointment. He has clearly stated, the case of the applicants will be considered as per rules. The public appointments are required to be made in accordance with law. There cannot be a direction contrary to the selection list prepared on merit, as per the direction of the Hon'ble Tribunal. Even if there was consent, the same does not confer jurisdiction to issue an appointment contrary to the scheme, law and contrary to merits. The same hits by res judicata. The said aspect of the matter has been considered by the Hon'ble Supreme Court in the judgment reported in 1999 (1)SCC 273 (V.S.Charati V/s Hussein Nhanu Jamadar) reads as follows:

"A decision rendered by a Tribunal/Court in absence of challenge becomes final and binding on both the parties and merely because it may be wrong, it would not become a nullity Res Judicata – Judgment unopposed becomes final and binding".

1994 (4) SCC 138 Hon'ble Supreme Court held that "object of Compassionate appointment, is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment." Compassionate appointment after lapse of reasonable period held, impermissible.

In the case of Union of India & another V/s Shashank Goswami and others Hon'ble Supreme Court held as follows:-

"Compassionate appointment – Entitlement to – Strict adherence to applicable norms governing – Held, compassionate appointments

have to be made in accordance with rules, regulations or administrative instruction taking into consideration financial condition of family of deceased.”

9. The respondent has filed reply statement alleging that the mistake occurred was not reported by the applicants to the Tribunal in the earlier proceedings. Having regard to the fact that the candidates with lesser marks have been selected and appointed by the review applicants, this Tribunal has observed that in correctness of things, this respondent also should have been selected and appointed. The respondent made representation dated 29.01.2014 enclosing the order dated 03.01.2014 of this Tribunal to the applicants for compliance. Shri.Vikram Rai has not stated in the statement, regarding the representation received by him, after going through the order dated 03.01.2014, the applicants ought to have filed the Review Application immediately. The Contempt Petition came to be filed on 18.02.2014. On 20.02.2014 notices were ordered in the Contempt Petition. On 10.03.2014, Shri.Vikram Rai and one Shri. N.R.Ramesh were present before the Hon'ble Tribunal. The Tribunal directed this respondent to implead Shri.S.Balakrishna, Additional Director General, as respondent to the contempt proceedings. The Bench which heard the contempt proceedings on 10.03.2014 was not constituted on 27.03.2014. On 03.04.2014 personal appearance of the three Officers was ordered on the next date i.e., on 24.04.2014. The Officers were present before the Tribunal, subsequently Review Application was filed on 27.03.2014.

10. There is no error in the order dated 03.01.2014 in the O.A No.725/2012. The grounds made in the R.A are totally misconceived and totally contrary to the facts. The applicants have suppressed the material facts before this Tribunal. There is no res judicata in so far as fundamental right is concerned. This Tribunal was pleased to order based on the statement made by the concerned officer.

11. We have carefully considered the rival contentions and perused the pleadings on record.

12. The learned counsel for the applicants has taken us to the order of this Tribunal in O.A No. 725/2012 dated 03.01.2014. The said order reads as under:-

“He assure that if the matter is remitted back to him, he will do the needful. I am inclined to believe him. Proper appointment orders may be issued to the applicant so that they will be able to resolve this issue. This may be concluded within one month's time. All the original records to be returned to the respondents.”

13. The learned counsel for the applicants further submitted the merit of the claim of the applicants has reached the finality in the O.A No.410/2009, this Tribunal allowed the said O.A on 10.10.2011, the order reads as under:-

“Following the aforesaid decision in Mr. Srinivas, R's case (supra), in the present case, I direct respondents to place the case of the applicant, along with others, before the Compassionate Appointment Committee for due consideration in its next immediate meeting and to take appropriate decision pursuant to the proceedings of the said Committee and in accordance with the Scheme for Compassionate Appointment and the instructions issued by

the Government of India from time to time on the subject and also to communicate their decision to the applicant.

In the result, the O.A is allowed pro tanto. No cost. Ordered accordingly."

14. As per the direction of the Tribunal the respondents have decided the matter and the applicant filed another O.A No.128/2012. The said O.A was allowed on 15.03.2012. The said order reads as under:-

"Therefore the impugned order is quashed. Respondents are directed to marshal their vacancy under the 5% quota available and then grant 3 opportunities for the applicant and others like him, therefore that it may not be an empty formality but a meaningful exercise. When the next slot of vacancy arises, these matters can be taken up. It is to be noted that the 3 year time frame is actually a minimum of three considerations whether it be within the time frame or not."

15. As per the direction of the Tribunal in the above O.A No.128/2012, the Department conducted meeting for appointment of compassionate ground on 28th to 30th May 2012 (Annexure R5) in which Smt. Manjula W/o late. Ashwathnarayana secured 77 marks, since only one vacancy was there, she was selected with others including applicant, applicant was not considered. Hence they filed the O.A No.725/2012.

16. We have carefully considered the decision taken by this Tribunal. The said order was issued on the statement made by one Shri.Vikram Rai, Director and Head of Office of the 2nd respondent.

17. The learned counsel for the review applicants submits the respondent/applicants have no legal right on appointment of compassionate ground as held by the Hon'ble Supreme court in the following judgments:-

1. *Life Insurance Corporation of India vs. Asha Ramchandra Ambekar and Another reported in (1994) 2 SCC 718.*
2. *Union of India and another vs. Shashank Goswami and another reported in (2013) 1 SCC (L&S) 51*
3. *Steel Authority of India Limited vs. Madhusudan Das & Others reported in (2008) 15 SCC 560.*
4. *Director of Education (Secondary) and Another vs. Pushpendra Kumar and Others reported in (1998) 5 SCC 192.*
5. *MGB Gramin Bank vs. Chakrawarti Singh reported in 2013 AIR SCW 4801.*
6. *State of J & K and others vs. Sajad Ahmed Mir reported in (2006) 5 SCC 766*
7. *Umesh Kumar Nagpal vs. State of Haryana and others*
With
Anil Malik vs. State of Haryana and others reported in (1994) 4 SCC 138

8. *Panjab National Bank and others vs. Ashwini Kumar Taneja*
reported in (2004) 7 SCC 265

9. *Mumtazyunus Mulani vs. State of Maharashtra and others*
reported in (2008) 11 SCC 384

10. *State of UP and Others. Vs. Pankajkumar Vishnoi*
With
State of UP and others vs. Udaiveer Singh & Another
reported in 2013 AIR SCW 5046

11. *General Manager (D & PB) and Others vs. Kunti Tiwary and Another* reported in (2004) 7 SCC 271

18. He further contended the decision of the Tribunal in absence of challenge becomes final and binding on both the parties and merely because if may be wrong, it would not become a nullity-Res Judicata – Judgment unopposed becomes final and binding.” For this he relied upon Hon’ble Supreme Court judgments as under:-

1. *V.S.Charati vs. Hussein Nhanu Jamadar (Dead) By RSS,*
reported in (1999) 1 SCC 273

2. *Union of India and others vs. Kamala Devi* reported in AIR
2005 SC 3132

3. *Supreme Court Employee Welfare Association vs. Union of India* reported in AIR 1990 SC 334.

19. The learned counsel for review applicants submits the impugned order is illegal and against the law. After careful consideration of the submission of the learned counsel from either side, it is evident, we are of the view if the order is illegal and against law that has to be challenged in the Higher Forum. We find there is clerical error or mistake or error apparent. The power of Review is restricted under Order 47 Rule 1 of CPC. The judgments referred by the Review Applicants are relevant to decide the O.A on merit. The affidavit filed by the respondents as additional document cannot be considered to review the order. The Hon’ble High Court has not directed to file R.A. In this aspect we apply the judgment of the Hon’ble Supreme Court in the case of *State of West Bengal and others vs. Kamal Sengupta and another* reported in (2008) 2 SCC (L&S) 735 the relevant para is extracted here under:-

19. “At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debitojustitiae*. Not only this, the party seeking review has also to show that such additional 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 earlier.

20. The term “mistake or error apparent” by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If

an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

20. For the foregoing reasons, the review applicants failed to establish for review of the order as prayed for in this R.A.

21. R.A is dismissed. No order as to costs.”

4.Since the Review Application was dismissed, the matter was taken again to the High Court in WP.No.45260-45261/2014(S-CAT), which was disposed of vide order dated 16.09.2019, which we quote:

“ORDER

Against the order passed by the Tribunal directing the petitioner to consider the case of the respondent-applicants for appointments on a compassionate ground. It is submitted that consideration has to be made on the basis of availability of the points and vacancies. Consideration for appointment on compassionate ground is also to be made on 100 points tabular statement and as laid down in the scheme.

2. Learned counsel for the petitioner submits that direction may be issued to the petitioner to consider case of the respondent-applicants and consideration for appointment on compassionate ground would be in accordance with the scheme.

3.Submission made by both the learned counsel for the parties for consideration and disposal of their respective petitions are taken on record.

4. Accordingly, respondent-applicants to make available representations with all available points to the petitioner within two weeks from the date of receipt of a certified copy of this order and from thereafter petitioner to consider the case of respondent-applicants within three weeks in accordance with law by a speaking order.

The petitions are disposed of accordingly.”

5. In it the respondents submitted to the Court that the Court may grant direction to consider this matter and pass appropriate orders. Learned counsel for the present applicant would now say that this is in the form of concession made by them that if the matter is remitted back, they would do the needful and therefore needs of justice would be satisfied. Therefore, the Hon'ble High Court directed that this may be considered by the respondents.

6. Now Shri V.N. Holla, learned counsel for the respondents submits that they have obtained from the High Court extension of time. High Court had granted two weeks' time to do this. Up to 15.03.2020 they have been given time to do this.

7. Then the question is under what parameters they will do this. Therefore, now we will stipulate the parameters under which it will be done.

1.If the applicant had secured more marks than the 9+3 people, whose names are now brought in, then he will be granted appointment immediately, if necessary by creating supernumerary post or by reverting or sending out any of the selected people.

2. Government of India is hereby directed to conduct an enquiry through the CBI to find out the truth about the fraud involved in this matter. This they shall do within the next 2 months and on getting receipt of the report from the CBI, to take appropriate action against the concerned officials.

8. It is further directed that they may comply this consideration before 15.03.2010 as ordered by the Hon'ble High Court. OA allowed as above. No costs.

(C.V.SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

Annexures referred in O.A. No. 170/01258/2019

Annexure-A1: Copy of the Tabulated list.
Annexure-A2: Copy of Order dated 10.10.2011.
Annexure-A3: Copy of the representation.
Annexure-A4: Copy of the letter dated 30.03.2011..
Annexure-A5: Copy of the Order dated 15.03.2012.
Annexure-A6: Copy of letter dated 30.07.2012.
Annexure-A7: Copy of Order dated 03.01.2014 passed in OA.No.727/2012.
Annexure-A8: Copy of order dated 17.03.2014 in WP No.11032/2014.
Annexure-A9: Copy of RA dated 31.07.2014.
Annexure-A10: Copy of Order dated 16.09.2019 in WP.No.44027-28/2014.
Annexure-A11: Copy of the representation dated 26.09.2019.
Annexure-A12: Copy of communication dated 22/23.10.2019.
Annexure-A13: Copy of the representation dated 11.11.2019.

Annexures referred by the Respondents in the Reply

Annexure-R1: Copy of the Revised family pension dated 08.09.2017.
Annexure-R2: Copy of the chart showing arising of vacancies year wise from 2012.
Annexure-R3: Copy of Report of Committee on compassionate appointment dated 17.09.2008.
Annexure-R4: Copy of Recommendations of compassionate appointment Committee dated 23.12.2011.
Annexure-R5: Copy of f compassionate appointment Committee meeting held on 30.05.2012.
Annexure-R6: Copy of letter dated 02.01.2020.

Annexures referred in the Rejoinder

Annexure-A14: Copy of RA No.75/2014.
Annexure-A15: Copy of the Affidavit of Mr.Vikram Roy.

Annexures referred in the Affidavit

Annexure-A16: Copy of Statement.

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