

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

RA No. 16 of 2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Gouranga Charan Das, aged about 70 years, S/o Late Balaram Das, retired Sub Divisional Engineer, BSNL, at present residing in House No. 100, Utkalmani Marga, Aparna Nagar, Post-Chauliaganj, Cuttack-753004.

.....Applicant

VERSUS

1. Union of India represented through Secretary, Department of Telecommunications, Sanchar Bhavan, 20 Ashoka Road, New Delhi – 110001.
2. The Chairman cum Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi – 110001.
3. The Dy. Director General (Personnel), BSNL Corporate Office, New Delhi – 110001.
4. The Chief General Manager, Bharat Sanchar Nigam Ltd., Odisha Circle, BSNL Bhavan, Bhubaneswar-751002.
5. The Chief General Manager, BSNL T&D Circle, Sanchar Vikash Bhavan, Residency Road, Jabalpur – 482001.

.....Respondents

For the applicant : Mr.A.K.Mohanty, counsel

For the respondents: Mr.S.Behera, counsel
Mr.S.B.Jena, counsel (BSNL)

Heard & reserved on : 22.1.2020

Order on : 27.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

This Review application (in short RA) is directed against the order dated 13.3.2019 of the Tribunal in OA No. 523/2012 (Annexure-R/1 of the RA) by which the OA was dismissed. The applicant in the OA No. 523/2012 is also applicant in the RA. The facts in brief are that the applicant had claimed the benefit of antedating his lateral promotion from the cadre of Assistant Superintendent Telegraph Traffic (in short ASTT), which got merged with the cadre of Junior Telecom Officer (in short JTO) w.e.f. 1.4.1994, granted to him by the authorities from 9.2.1996 to 8.8.1995 on completion of 12 years of service as ASTT/JTO at par with other JTOs. The lateral promotion w.e.f. 9.2.1996 was allowed to the applicant vide order dated 24.7.2001. He submitted representation to the authorities on 14.11.2008 and when no action was taken, he filed the OA No. 153/2009 which was disposed of with direction

to the respondents to dispose of the representation dated 14.11.2008. The order dated 3.5.2012 passed by the authorities to reject the said representation, was impugned in the OA No. 523/2012.

2. In the RA, the following grounds are advanced by the applicant:-

(i) Tribunal ignored the fact that the grievance of the applicant is a continuing cause of action as he was drawing less pay and pension due to non-acceptance of his claim in the OA. The judgment of Hon'ble Apex Court in the case of M.R. Gupta vs. Union of India has been cited in the RA. Moreover, the representation of the applicant was disposed of on 3.5.2012.

(ii) Tribunal ignored the fact that the juniors of the applicant were given promotion on completion of 12 years of service. Since the applicant completed 12 years of service on 7.8.1995, he should be allowed promotion w.e.f. 8.8.1995.

(iii) His promotion was allowed w.e.f. 9.2.1996 on the basis of the DOT order dated 13.1.1998 which was quashed by Hon'ble High Court of Himachal Pradesh which was confirmed by Hon'ble Apex Court, which is clear from the judgment of the Principal Bench enclosed with the written notes filed by the applicant.

(iv) In view the facts mentioned, Tribunal ignored the material pleadings and hence, it is an error apparent on the face of the record, for which the review is called for.

3. The Review respondents have filed a reply to the RA mainly stating that the grounds in the RA cannot be accepted for reviewing the impugned order. The applicant has filed a Counter to the said reply of the respondents mainly reiterating the contentions in the RA.

4. Heard learned counsel for the review applicant. He submitted that as explained in the RA, there is error apparent on the face of the record for which the RA is to be allowed. He also filed copy of the judgments of Hon'ble Apex Court in the cases of Shivdeo Singh & Ors. vs. State of Punjab & Ors. in Appeal (civil) 265 of 1958; S. Nagraj and Ors. vs. State of Karnataka and Anr. JT 1993 (4) SC 27 and Aribam Tuleshwar Sharma vs. Ariham Pishak Sharma and Ors. (1979) 4 SCC 389. He also filed a copy of the judgment of Hon'ble High Court of Himachal Pradesh dated 24.9.2008 in the case of R.L. Mahajan and others vs. Union of India and others in CWP No. 262 of 2002.

5. Learned counsel for the respondent No. 1 and other respondents of BSNL were heard. It was submitted that the grounds mentioned in the RA are not valid grounds to justify review of the impugned order dated 13.3.2019 of the Tribunal.

6. We have considered the submissions made on behalf of the parties. The law is well settled that the review of the Tribunal's order is permissible if there is an error apparent on the face of the record and the review cannot be a rehearing of the OA or it cannot be re-appreciation of the facts or legal points. Hence, the RA needs to be examined to see if the applicant has been able to demonstrate that there is error in the impugned order which is apparent on the face of the record. The ground mentioned relating to delay, it is stated in the RA that there is no delay on the part of the applicant in filing the OA No. 353/2012 since it is a continuing cause of action in view of the impact of the claim on the pay and pension of the applicant. In the case of M.R. Gupta vs. Union of India & Ors. reported in 1996 AIR 669, the claim of the appellant-employee related to wrong fixation of pay. Regarding facts of the case, it is observed by Hon'ble Apex Court as under:-

"The only question for decision is : Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law? Only a few facts are material for deciding this point.

The appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he joined service in the railways in 1978. The appellant claimed that the fixation of his pay on his joining service in the railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1.8.1978 in accordance with Rule No. 2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-c.

.....

Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs."

7. In the OA No. 523/12, the applicant's claim was for antedating his promotion to 8.8.1995 and not for wrong fixation of pay as in the case of M.R.

Gupta (supra). As stated in the impugned order dated 13.3.2019, the condition for promotion of the ASTTs (applicant was in ASTT cadre which was merged with JTO cadre) was that no lateral promotion of the ASTTs will be allowed unless all the JTOs who were senior were promoted first. Hence, the grievance of the applicant related to promotion and it was not due to wrong fixation of pay. His pay fixation would be different if he would be allowed promotion and it cannot be considered to be a case of wrong pay fixation. Observations of Hon'ble Apex Court in the judgment in the case of M.R. Gupta (supra) as extracted in the preceding paragraph clearly hold that the claim of promotion would be subject to delay and laches and hence, it cannot be considered to be a continuing cause of action. Hence, we do not find any apparent error in the impugned order dated 13.3.2019 on the issue of delay which was raised by the respondents.

8. It is stated in the RA that the Tribunal ignored the pleadings on record that the applicant's juniors were promoted earlier than the applicant. This point was examined by the Tribunal earlier as would be seen from the paragraph 18 of the impugned order, which states as under:-

"18. Learned counsel for the applicant has filed a written note of submissions reiterating the grounds taken in the pleadings and stressing on the point that his juniors were allowed lateral advancement w.e.f. 8.8.1995 as would be revealed from Annexure-A/7 of the OA. We do not find any order enclosed by the applicant in Annexure-7 of the OA showing the date of promotion of any of the applicant's junior to be w.e.f. 8.8.1995. One promotion order dated 26.6.1997 was enclosed in Annexure-7 showing the date of promotion of some officers to be in March and June 1997. Another order dated 1.1.1998 was enclosed in Annexure-7 showing promotion of some officers to be May, 1998. There is no order showing the date of promotion of any of the erstwhile ASTT to be 8.8.1995 as contended by the learned counsel for the applicant. Hence, we have no hesitation to reject the contention of the applicant that any of his junior who was similarly placed as the applicant, was promoted w.e.f. 8.8.1995 since no document in support of such contention has been furnished before us."

There is nothing in the RA to show that above findings in order dated 13.3.2019 was an apparent error.

9. One of the ground in the RA is that the Tribunal ignored the judgments enclosed with his written notes which showed that the DOT's letter fixing the date of merger of both cadres to be 9.2.1996 was quashed by the judgment of Hon'ble High Court of Himachal Pradesh and the judgment of the Principal Bench enclosed with the written note had mentioned about it. Such contention has been considered already in the paragraph 19 of the impugned order dated 13.3.2019 in which it was observed that the judgment of the Principal Bench enclosed with the written notes was factually as it related to the date of fixation of the erstwhile ASTTs at par with the JTOs w.e.f. 1.1.1996 since both the cadres were merged w.e.f. 1.1.1994. It was also observed in the impugned order

that the claim of parity in pay fixation was a continuing cause of action for which such claim will not be barred by limitation in the light of M.R. Gupta (supra). But as stated earlier, the claim of the applicant was antedating of his promotion which was not a continuing cause of action. Hence, the judgment of the Principal Bench enclosed with the written note was found to be factually different from the OA No. 523/2012.

10. Learned counsel for the applicant has filed a copy of the judgment of Hon'ble High Court of Himachal Pradesh in the case of R.L. Mahajan (supra), in which the dispute related to the date of merger of the cadre of ASTT and JTO. There were two orders for merger of two cadres, one specifying the date of merger to be 1.1.1994 and other order specifying the date to be 9.2.1996. The petitioner before Hon'ble High Court was claiming that the date of merger is 1.1.1994 and not 9.2.1996, for which the petitioner claimed the pay scale of the JTO for the ASTTs w.e.f. 1.1.1996. The Tribunal had not allowed the claim of the petitioner for which he had approached Hon'ble High Court of Himachal Pradesh which held in that case that the effective date of merger will be 1.1.1994 for which, the petitioner will be entitled for the pay scale at par with the JTOs w.e.f. 1.1.1996. But the claim of the applicant in the present OA No. 523/2012 was antedating of his promotion and not for parity in pay/pay scale. How the merger date of 1.1.1994 would have affected the applicant's claim should have been explained in the pleadings in the OA. There is nothing in the RA to show that such pleadings were taken by the applicant in the OA and such pleadings were not considered by the Tribunal, while passing the impugned order dated 13.3.2019.

11. In the case of Shivdeo Singh (supra), the power of Hon'ble High Court to review its own order to give opportunity to the parties who were affected by the order in a case in which they were not parties was considered and it was held that the review was in order since there was an error apparent on the face of the record. In the case of S. Nagraj (supra) it was held as under:-

“12. It is true that the Government is mainly responsible for the above unfortunate state of affairs but that should not desist this Court for revising and reviewing the said orders which have such serious consequences. It is one thing to punish the person who furnished false particulars and altogether a different thing to refuse to revise and review the orders when the correct situation and its likely consequences are brought to the notice of Court. It is the duty of the Court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders was passed on a wrong or mistake assumption of facts and that implementation of those orders would have serious consequences. An act of Court should prejudice none. An act of Court should prejudice none.....”

13. In the case of Aribam Tuleshwar Sharma (supra) the issue considered by Hon'ble Apex Court was whether the review of the order was done on valid grounds. It was held as under:-

“It is true as observed by this Court in Shivdev Singh and Ors. v. State of Punjab and Ors. AIR 1963 SC 1909 there is nothing in Article 226 of the Constitution preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

14. Applying the ratio of the judgments in above cited cases to the present Review Application, it is clear that the said Review Application can be allowed only if any error apparent on the face of the record has been made out in the Review Application. As discussed earlier, the grounds mentioned in the Review Application reveal no error apparent on the face of the record or any other justification for reviewing the impugned order as per provisions of law. Hence, the Review Application is devoid of merit as per the provisions of law and it is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)