

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Review Application No.202/00003/2019
(in OA 202/409/2017)

Review Application No.200/00004/2019
(in OA 200/272/2017)

Review Application No. 200/00005/2019
(in OA 200/227/2017)

Jabalpur, this Wednesday, the 01st day of January, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Review Application No.202/00003/2019
(in OA 202/409/2017)

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
2. Central Board of Excise & Custom's, Through its Chairman, Department of Revenue, North Block, New Delhi.
3. DG (HRD) 408-409, Deep Shikha Building, Rajendra Palace, New Delhi.
4. Chief Commissioner of Bhopal, Central Excise Zone, M.P & Chhattisgarh, New GST Bhawan 35-C, Administrative Area, Arera Hills, Bhopal - 462012

-Applicants (Respondents in OA)

(By Advocate – Shri Siddharth Seth)

V e r s u s

Shri Alok Dixit S/o Shri Ram Babu Dixit, aged about 55 years, Superintendent CGST & Central Excise Commissionerate, Bhopal.

- Respondent (Applicant in OA)

(By Advocate – Shri Manoj Sharma)

2. Review Application No.200/00004/2019
(in OA 200/272/2017)

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
2. Central Board of Excise & Custom's, Through its Chairman, Department of Revenue, North Block, New Delhi 110001.
3. Additional Director General (HRM I), Central Board of Excise and Customs, Director General of Human Resources Development, 409/08, Deep Shikha Building, Rajendra Palace, New Delhi 110008.
4. Chief Commissioner of Bhopal, Cadre Controlling Authority, M.P & Chhattisgarh, 48, Administrative Area, Arera Hills, Hoshangabad Road Bhopal – 462012.
5. Principal Commissioner of Customs and Central Excise, Manikbagh Palace, Indore (M.P) 452001

-Applicants (Respondents in OA)

(By Advocate – Shri Siddharth Seth)

V e r s u s

1. Umakant Dubey, S/o Late Shri Govind Prasad Dubey, D.O.B 29.12.1961,47/1, Nehru Nagar (West), Bhilai District – Durg Chhattisgarh (M.P) 490020.
2. Shakti P. Panigrahi, S/o Late Shri P.P. Panigrahi, D.O.B 28.08.1960, Near Indra Chowk, Pramod Tiwari Gali, Shayam Nagar, Post Office – Ravigram, District Raipur (Chhattisgarh) 492001.

- Respondents (Applicants in OA)

(By Advocate – Shri Jitendra Shrivastava)

3. Review Application No.200/00005/2019
(in OA 200/227/2017)

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
2. Central Board of Excise & Custom's, Through its Chairman, Department of Revenue, North Block, New Delhi 11001.
3. Additional Director General (HRM I), Central Board of Excise and Customs, Director General of Human Resources Development, 409/08, Deep Shikha Building, Rajendra Palace, New Delhi 110008.
4. Chief Commissioner of Bhopal, Cadre Controlling Authority, M.P & Chhattisgarh, 48, Administrative Area, Arera Hills, Hoshangabad Road Bhopal – 462012.
5. Principal Commissioner of Customs and Central Excise, Manikbagh Palace, Indore (M.P) 452001

-Applicants (Respondents in OA)

(By Advocate – Shri Siddharth Seth)

V e r s u s

Shri Ravindra Ghanshani, S/o Shri Late Harikishan Ghanshani, D.O.B 02.04.1962, Sai Kripa Colony, Near Bombay Hospital, Indore (M.P)

- Respondent (Applicant in OA)

(By Advocate – Shri Manoj Sharma)

(Date of reserving order : 25.11.2019)

COMMON ORDER

By Navin Tandon, AM.

All these Review Applications are being decided by a common order as in the Original Applications, the applicants had sought for similar relief. For the purpose of this order, reference is

made to the facts pleaded and the documents annexed in RA 202/00003/2019 (in OA 202/409/2017) as the Original Applications Nos.200/227/2017 and 200/272/2017 were disposed of in the light of the order passed in OA 202/409/2017.

2. This Review Application has been filed under Section (sic Rule) 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for the orders passed in Original Application No.200/409/2017 dated 10.10.2018 (Annexure RW-1).

3. The operative part of the order to be reviewed is as under:

“5. Accordingly, the respondents are directed that they should conduct the review DPC for the DPC, which was held on 09.05.2018 on the basis of seniority, as revised on 06.04.2018. This exercise should be completed within a period of 45 days from the date of receipt of a certified copy of this order.”

4. The applicants (respondents in OA) approached the Hon’ble High Court of Madhya Pradesh in MP-5964-2018, wherein vide order dated 23.01.2019 (Annexure RW-3) the Hon’ble High Court has observed as under:

“Shri Siddharth Seth with Shri Himanshu Shrivastava, learned counsel for the petitioners.

Shri Manoj Sharma, learned counsel for the respondent, on caveat.

The learned counsel for the petitioners prays for and is permitted to withdraw this petition with liberty to file an application before the Tribunal for modification of order dated 10.10.2018 as it is stated that the petitioners could not place before the Tribunal the fact that the redrawing up of the seniority list by order dated 06.04.2018 had been withdrawn by order dated 25.04.2018, and

therefore to take further steps for action on the basis of the seniority list, as modified at the Zonal and National level on 06.04.2018, is not possible.

The petitioners are also granted liberty to seek condonation of delay before the Tribunal on the ground of pendency of the present petition as well as to pray for stay or keeping in abeyance the contempt proceedings.

With the aforesaid liberty, the petition filed by the petitioners is disposed of as withdrawn.

Certified Copy as per rules.”

5. This Review Application has been filed on 29.01.2019.
6. The brief facts of the Original Application are that some reserved candidates were placed against the vacancies for unreserved slots during cadre promotion from Inspector to Superintendent and, therefore, they have become senior to the applicant.
 - 6.1 During the pendency of the said Original Application, the applicants (respondents in OA) have corrected the seniority on 26.03.2018 at the zonal level and on 06.04.2018 at the national level. Accordingly, the DPC was convened on 09.05.2018 for the post of Assistant Commissioner, Central Excise and Customs. However, this DPC had taken the seniority from the uncorrected seniority list, which was impugned in the Original Application.
 - 6.2 The grounds for filing this Review Application has been brought out in Para 3.4, which reads as under:

“3.4 Though the revised Zonal seniority list dated 26.03.2018 was prepared and submitted by Bhopal Zone to the DGHRD, restoring seniority position of the applicant prior to revision of seniority in the year 2014, the same could not be given effect in the All India Seniority list, that alone, is the basis for drawing zone of consideration as the same has been subsequently withdrawn by the competent authority on 25.04.2018. The order dated 25.04.2018 is filed herewith as Annexure RW/4. Therefore, no cause of action existed for the applicant as he has not been in the zone of consideration and cannot be so because of his seniority position.”

7. Perusal of the document placed at Annexure RW-4 shows that it is a letter written from Chief Commissioner, Bhopal Zone to Director General of Human Resource Development, Central Board of Excise and Customs, the extracts of which are as under:

“4. In terms of the said letter dated 27.10.2017 and specific directions received from the Board in the meeting with the Member(Admn), CBIC on 23.3.2018 to the CCO Bhopal, the Zonal seniority of Superintendents has been restored by this office as it was existed before review DPC dated 05.06.2014. However, the seniority of 29 officers of reserved category, who were promoted by applying the principle ‘Own Merit’ is subject to review DPC for re-assigning their seniority, which had been fixed on 24.04.2018 by the competent authority.

5. The Board has now again requested vide letter dated 23.4.2018 that *status quo* in the matter of revision of seniority should be maintained. In the light of the above express directions, the review DPC for promotion in the grade of Superintendent without applying the principle of ‘Own Merit’ is hence put on hold, till further orders. Further, as per directions of the Board, it is felt that the revised seniority list which was submitted earlier vide this office letter of even No. 18869-70 dated 26.3.2018 without applying the principle of ‘Own Merit’ may kindly be, thus, ignored and the earlier seniority listed based on ‘Own merit’ clause and issued by DGHRD vide OM F.No.8/B/38/HRD (HRM)/2010/O-III dated 20/26.03.2015 may be restored.

6. This issues with the approval of Chief Commissioner, Customs, Central Excise & Central GST, Bhopal.”

8. The applicants (respondents in the O.A) have filed the application for condonation of delay, wherein it is stated that they filed MP No.5964/2018 before the Hon'ble High Court on 07.12.2018, which was withdrawn with liberty to file a Review Application before this Tribunal. The Hon'ble High Court passed its orders on 23.01.2019, copy received on 24.01.2019 and this Review Application has been filed on 28.01.2019. Therefore, they have prayed for condonation of delay of 106 days.

9. The respondent (applicant in the OA) has strongly objected to grant of any condonation of delay and has stated that this Review Application is not maintainable as there is no provision to condone the delay in filing of Review Application, which has to be filed within 30 days from the date of receipt of the order. It has been alleged that the applicants (respondents in OA) have resorted to time wasting techniques to delay the issue.

10. Learned counsel for the applicants (respondents in the OA) have pleaded that inadvertently, the order dated 24/25.04.2018 (Annexure RW-4) was not brought to the notice of this Tribunal while the Original Application was being decided. Since, the said seniority of 06.04.2018 has already been withdrawn by the order dated 24/25.04.2018 (Annexure RW-4), the review is necessary.

10.1 He has cited the following cases in support of his submissions:

10.2 Order of the Debts Recovery Appellate Tribunal – Delhi in **Standard Chartered Bank vs. Radnik Exports & Ors.**, 2012 SCC OnLine DRAT 66.

10.3 Hon'ble High Court of Madhya Pradesh decision in the case of **Smt. Shanti Devi Agarwal vs. V.H. Lulla**, AIR 2004 MP 58.

10.4 Judgment of Hon'ble Supreme Court in the case of **Asit Kumar Kar vs. State of West Bengal and others**, (2009) 2 SCC 703.

11. Shri Manoj Sharma, learned counsel for the respondent (applicant in OA) brought out that review can be done as per Section 22(3)(f) of the Administrative Tribunals Act, 1985, which is to be done as per Code of Civil Procedure, 1908. He cited Order 47 Rule 1 of CPC for the purpose.

11.1 Learned counsel for the respondent (applicant in OA) submitted that since no new or important matter has been discovered, the Review Application is liable to be dismissed with costs.

12. In the case of **Standard Chartered Bank** (supra), the issue refers to “recall” under the relevant Act, whereas instant case is of review under Rule 17 of the CAT (Procedure) Rules, 1987. Therefore, the two are easily distinguishable.

12.1 The issue before the Hon’ble High Court of Madhya Pradesh in **Smt. Shanti Devi Agarwal** (supra) was also of “recall” and, therefore, the same is not applicable in the present case, which is of review.

12.2 In **Asit Kumar Kar** (supra), the petition was filed under Article 32 of the Constitution of India. Para 6 of the judgment reads as under:

“6. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.”

12.3 In the said judgment, the Hon’ble Apex Court has held that recall order is passed when the original order was passed without giving opportunity of hearing to the affected parties. This is not the case in the order under review, which was passed duly hearing both the parties. This is a case of review and, as Hon’ble Apex Court has held, it has to be considered on merits, if there is error apparent on the face of record.

13. Perusal of the communication dated 24/25.04.2018 (Annexure RW-4) very clearly indicates that this is only a request letter from the Zonal Office to the Central Board. In spite of repeated opportunities given to the applicants (respondents in OA), they have failed to produce any document, wherein the seniority list issued at the National level on 06.04.2018 has been revised.

14. It is wrong on the part of the applicants (respondents in OA) to submit before this Tribunal as well as in Hon'ble High Court that the National seniority list revised on 06.04.2018 has been withdrawn by order dated 25.04.2018.

15. Regarding the limitation aspect of filing this Review Application, even if the period spent in Hon'ble High Court is taken away, the same has been filed beyond the stipulated 30 days time, as prescribed in Rule 17 (1) of the CAT (Procedure) Rules, 1987.

16. Even on the merits, the applicants (respondents in OA) have failed to produce any document to show that there is any error apparent on the face of the record and, therefore, it fails the test of merit also.

17. Order 47 Rule 1 of CPC reads as under:

“1. Application for review of judgment.- (1) Any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

18. We may note that scope of review under the provisions of Order 47 Rule 1, CPC, which provision is analogous to Section 22 (3) (f) of Administrative Tribunals Act, 1985, as held by the Hon’ble Supreme Court is very limited. Hon'ble Supreme Court in 1995 (1) SCC 170 **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhury (Smt.)** referring to certain earlier judgments, observed that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it

has to be established by lengthy and complicated arguments, such an error can not be cured in a review proceeding.

19. The power of review available to this Tribunal is the same as has been given to a Court under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code. The apex court has clearly stated in **Ajit Kumar Rath Vs. State of Orissa and others**, (1999) 9 SCC 596 that: “a review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it”. This Tribunal can not review its order unless the error is plain and apparent. It has clearly been further held by the apex court in the said case that: “[A]ny other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment”.

20. It is also settled principle of law that the Tribunal cannot act as an appellate court for reviewing the original order. This proposition of law is supported by the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Tarit Ranjan**

Das, 2004 SCC (L&S) 160 wherein their lordships have held as under:

“The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and *rehearing of the matter to facilitate a change of opinion on merits*. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application”.

21. Hon'ble Supreme Court in the matters of **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735 scanned various earlier judgments and summarized the principle laid down therein, which reads thus:

“35. 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 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

(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.”

22. We are, therefore, of the considered view that the law noticed hereinabove is squarely applicable in the present case and since no error apparent on the face of record has been pointed out or established, the present Review Application is misconceived and is liable to be dismissed.

23. In the result, the Review Application is dismissed as barred by limitation as well as on merits.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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