

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**
Review Application No.03/2020
In
Original Application No.219/2014

This the 23rd day of February ,2021

CORAM :

HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)

HONBLE DR A K DUBEY, MEMBER (A)

Shri Pradeep R.Kohli,
S/o. Shri RamlalKohli,
Aged 64,
R/O: A/219, Darshanam Eco-Vista,
Tarsali Bypass,
DhanyaviChokdi, Vadodara – 390 009..... Applicant

(By Advocate Ms.S.S.Chaturvedi)

Vs.

1. Union of India,
Notice to be served through,
General Manager,
Western Railway,
Churchgate, Mumbai – 400 020.
2. Divisional Railway Manager (E)
Western Railway,
Pratapnagar,
Baroda – 390 004..... Respondents

ORDER (BY CIRCULATION)

Per Dr A K Dubey, Member (A)

1. The applicant has filed this Review Application No.03/2020 in OA No. 219/2014 which was disposed off by this Bench vide its order dated 20.08.2020. The reliefs sought in this Review Petition are as follows:-

- “(a) To admit this application;
- (b) To recall the order dated 20.08.2020 passed in OA No.219/2014 and review petition the same in the facts narrated herein above and be pleased to quash and set aside the order dated 20.08.2020 (Ann.A/1) and pass appropriate order, in the interest of justice;
- (c) Any other order though fit be passed;”

2. The applicant has filed this Review Application on the following grounds:-

- (a) As per the order dated 20.08.2020, in para 3, stated that the applicant was promoted on 24.12.1997 under MACP in the pay scale of Rs.5500 – 9000. But it is not true, or it was a regular promotion under V CPC.
- (b) “..... Hon’ble Tribunal erred to decide the matter as the applicant also relied on the DoP&T OM No.35034/3/2015-Estt.(D) dated 22.10.2019 and the same was sent through the e-mail on 04.08.2020 but the same has not considered in whole judgment. Therefore, also the order dated 20.08.2020 is required to be reviewed.”
- (c)It is further submitted that Hon’ble Tribunal mentioned the applicants’ reliance on the judgment of Hon’ble Madras High Court in WP No.16143 of 2016 decided on 01.09.2016 which was produced at the time of hearing through email (Annex.A/2) but the Hon’ble Tribunal failed to consider the same and also not distinguish while passing the order dated 20.08.2020.....

(The applicant has quoted the contents of paragraphs 3,5,6,8,9 & 10 of Hon’ble Madras High Court Order in W.P. No.16143/2016.)

- (d) “.....Respondents had lied and mislead the Hon’ble Tribunal while placing service sheet record that applicant had been granted four promotions as under and recorded in the order dated 20/08/2020 of this Tribunal (paragraph Nos.4 & 5 of the Order).

This all entry records are not properly interpreted of rules as subsequently VIth pay commission came into force and applicant approached to recognized Trade Union and replied.

The Hon'ble Tribunal has relied on revised sheet records inspection but this is the case of interpretation of rule in VI CPC had been changed the factual and legal circumstances of MACP.

- (e) “.....As such, service book entry inspection is not sufficient. The Hon'ble Tribunal relied on the respondents' reply but not gone through any record placed by the applicant.“
- (f) The applicant further submits that in the RTI reply (Annex.A/3 with OA) it was clearly stated by the respondent “that selection to the post of telegraph signaler is treated as fresh entry in group C.” It also said in its item 3.2 that “the date of entry in to the grade granted for benefit of MACP as Station Master in your case is 23.07.1986.

Under item No.3 stated that, “As per the service record First promotion in Scale of Rs.1400-2300 on 09.07.1988 i.e 4700(RP) II promotion in Scale of Rs.6500-10500 i.e. 4600 GP on 21.08.2008.

In view of the above, it is clear that the conclusion in para 4 of the order dated 20.08.2020 upon the reply of respondents' is not correct and misleading.

- (g) The applicant further submits that while granting the benefit of GP4800 w.e.f. 27.04.2015 on completion of 30 years service is treated as IIIrd MACP from the date of appointment as Telegraph Signaler, same MA not decided till date and pending.
- (h) The applicant further submits that on dated 05.07.2013 vide letter No.ET/P/245 to Divl. Secretary, WREU/BRC to reply under the subject grant of MACP benefit of GP 4800/- w.e.f. 01.09.2008 to Shri P.R.Kohli, SS, BJW under para 3 it is stated as under:-

“As per GM (E) CCG's letter no. EP /839 /0 Vol.IV dated 28.09.2010 PS 133 / 2010 if the second appointment in Railway Service is under the direct recruitment quota as per the terms and condition of direct recruitment, the same would be treated as direct entry and date of appointment in such grade would be treated as date of entry into the service for the purpose of financial up gradation under MACP Scheme.

If 27.05.1985 (as telegraphSignaler) is considered as second date of appointment he was given promotion for the post of SM grade 1400-2300 i.e. GP 4200 and II promotion as SS in Scale Rs. 6500-10500 i.e. 4600 GP w.e.f. 21.08.2008.”

(i) “.... the applicant was promoted in 1400-2300- i.e., 4200 on order dated 09.07.1988 and after a span of 20 years and 42 days was promoted as SS in scale of Rs.6500-10500 GP 4600 on 21.08.2008. So as per above record and spirit of MACP rule, the applicant was to be given GP4600 benefit on completion of 10 years w.e.f. 09.07.1998 from the date of promotion as SM. And then after the completion of 10 years w.e.f. 09.07.2008 for GP 4800 under VI CPC. ”

(j) “.....under VII CPC, the post of SM is upgraded from GP2800 to GP 4200 and the position of above discussion to be change as under:

	Pay Scale	Pay Band	Grade Pay	Date of entry in Grade	Remarks
Entry Grade	4500-7000	PB-2 (9300-34800)	4200	23.07.1986	Upgraded post under 7 th CPC w.e.f 01.01.2016
	5000-8000	PB-2 PB-2	4200	09.07.1988	Promotion ignored for MACP purpose (para 5)
	5000-9000		4200	24.12.1997	As above
	6500-10500	PB-2	4600	21.08.2008	w.e.f. 23.07.1996 on completion of 10 years from direct entry in the grade
		PB-2	4800	23.07.2006	On completion of 20 years service from the date of entry
		PB-2	5400	27.04.2015	On completion of 30 years service from the date of appointment as Telegraph Signaler i.e., 27.04.1985

3. The review applicant has also contended that promotion and selection are different and the selection as SM, the word promotion was not correct. It is further contended that RBE No.101/2009 was not interpreted properly in the order under review, finally, it is also contended that the respondents were wrongly considering the 10, 20 and 30 years' criteria of MACP.
4. We have carefully gone through the grounds raised in this review as well as the order of this Tribunal passed on 20.08.2020.
5. The scope for a review application is clearly defined in various orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon'ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon'ble Supreme Court culled out the principles which 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 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. The Hon'ble Supreme Court in an another judgment in the case of Union of India v/s TaritRanjan Das 2004 SCC (L&S) 160 while dealing with the order passed in Review Application at paragraph 13 observed asunder:

"The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reason contained therein whereby the original application was rejected. 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 and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with review petition as if it was hearing original application. This aspect has also not been noticed by the High Court."

7. Bearing in mind the above principles laid down by the Hon'ble Supreme Court, existence of an error on the face of the record is *sine qua non* for review of an order. It is not permissible for the forum to hear the review application to act as an Appellate Authority in respect of the original order by a fresh hearing of the matter to facilitate a change of opinion on merits. We have examined the grounds urged by the review applicant in support of his prayer for reviewing the order and we find that the review applicant has failed to bring out any apparent error on the face of record prayed for review. The para 7 of the order is self explanatory and it was based on records placed before us. The review applicant's plea is that this Tribunal

has not considered the distinction between promotion and selection that this Tribunal has taken into account the documents and records presented before it, as is obvious from para 7 of the order. The review applicant also felt that the judgment of Hon'ble Madras High Court in W.P No.16143 of 2016 passed on 01.09.2016 was lost sight of. Second plea was that the DoP&T order dated 22.10.2019 was not taken into account. This Tribunal had respectfully gone through this judgment and found that the factual matrix of this particular case was different. The reference to the DoPT order dated 22.10.2019 is made in the RA. This order is in the nature of consolidated instructions of the previous ones and is not a superseding one which means that the instructions and guidelines applicable to the OA applicant experienced no change.

8. Thus, in view of the above discussion and in light of the law laid down by Hon'ble Apex Court (Supra), the applicant has failed to point out any error much less an error apparent on the face of the record, justifying the exercise of power under sub-clause (f) of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985. The review application deserves to be dismissed and accordingly, the same is dismissed.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)