

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD
Review Application Nos.20/2017 in OA No.458/2014
Dated the 1st day of February, 2021**

Reserved on : 27.01.2021

Pronounced on : 01.02.2021

CORAM :

Hon'ble Shri Jayesh V Bhairavia, Member (Judicial)
Hon'ble Dr A.K.Dubey, Member (Administrative)

Shri Ramjibhai Rafalia
S/o Vasharambai Rafalia,
Working as Sub Divisional Engineer (FM),
Aged about 50 years, Block No.147/B, Raijinagar,
Near Motibaugh, Junagadh – 362 001. ... Applicant

By Advocate Shri P H Pathak

V/s

- 1 Bharat Sanchar Nigam Ltd,
Notice to be served through
The Assistant Director General,
B.S.N.L.(Estt-I), Sanchar Bhavan, New Delhi – 110 001.
- 2 Assistant General Manager,
Office of B.S.N.L.,
Gujarat Circle, Telephone Bhavan, C.G.Road,
Ahmedabad – 380 006. ... Respondents

By Advocate Ms R R Patel

ORDER

Per Hon'ble Shri J V Bhairavia, Member(J)

- 1 The present review application has been filed by the original applicant of OA 458/2014 (who is a group 'B' employee and still in service) seeking recall of order dated 24.07.2017 (decided by the earlier Division Bench – Both the Members of the said Bench have since retired from service), (Annexure A).
- 2 It is noticed that the Corporate office of BSNL with respect to extension of benefit of pay fixation under FR 22(1)(a)(i) to JTO (i.e. applicant herein) who got his Lateral Advancement promotion (JTO-LS) and post

based promotion as SDE, both during the period from 01.10.2000 to 30.09.2004 in the identical IDA scale of Rs.11875-300-17275 in the case of Shri R V Rafalia (i.e. applicant herein) and related stepping up cases, vide its order dated 29.09.2014 informed the Chief General Manager, Gujarat Telecom Circle, Ahmedabad wherein, in para 2 it was stated as under:

“it has been clarified by the Pers Branch that “the intent and purport of EPP-2007 is to allow the executive an opportunity to exercise the option to get the benefit of up gradation under the old time bound scheme, if it becomes due prior to 0.0.2004 and in case he so desires. Having exercised such an option Sh. Rafalia cannot be governed by the old time bound upgradation scheme for this purpose any subsequent promotion. In fact, he is automatically governed by EPP-2007. Accordingly on his regular promotion as SDE(T) on 10.03.2003 in E-2 scale, Sh. Rafalia may have to be granted the benefit of increment in E-2 scale in terms of Para II(V) of EPP-2007.”

Further in para 3 & 4 of the said order it has been clarified that “the EF Branch has also clarified that

“the cases of those who have opted for the EPP have to be decided in accordance with the Executive Promotion Policy. You are, therefore, requested to take action accordingly to decide the case and recovery of overpayment if any may also be intimated to this office.”

Pursuant to aforesaid order passed by the Corporate Office, the Chief General Manager, BSNL, Gujarat vide his order dated 30.10.2014 directed the GM, BSNL, Junagadh to fix the pay Shri R V Rafalia at the stage of Rs.13,375 w.e.f. 10.03.2003 and over payment if any, may be recovered and revised pay fixation should be intimated to his office. Accordingly, vide order dated 17.11.2014 the Office of GMTD, Junagadh intimated the applicant that his pay fixation has been done in accordance with BSNL CO letter dated 29.09.2014 and also intimated to Circle Office Ahmedabad office dated 30.10.2014 by enclosing the pay fixation memo and arrears calculation sheet. The applicant was requested to credit excess payment of arrears of Rs.1,31,148/-. Aggrieved by the said order of revision of pay and recovery of excess payment, the applicant filed OA 458/2014 and prayed for quashing and setting aside the aforesaid orders issued by the respondents.

As noted hereinabove, the said OA of the applicant had finally been adjudicated by order dated 24.07.2017.

In the present review application the applicant has prayed as under:-

- “(A) The Hon’ble Tribunal be pleased to recall the order dated 24.07.2017 in OA 458/2014 and direct the office to place the original application for hearing afresh in the interest of justice.*
- (B) Pending admission and final disposal of the application, be pleased to suspend the implementation and operation of the order dated 24.07.2017 at Annexure A to this application.*
- (C) Any other and further relief as this Hon’ble Tribunal deems fit and proper in the interest of justice be granted.”*

3 Learned counsel Shri P H Pathak mainly submitted as under:-

3.1 This Tribunal failed to consider the submission of the applicant that the copy of the applicant’s undertaking dated 05.07.2004 produced by the respondents with their additional affidavit dated 13.05.2017 has no relevancy with the pay fixation done by the respondents in the present case.

It is submitted that the said undertaking is related to pay fixation under FR 22 (1)(a)(i), i.e. order dated 28.04.2003 and it relates to pay fixation as per clause (V) of the Presidential order. This Tribunal while passing the final order lost sight of the submission that the respondents had not stated that the applicant had submitted his undertaking with reference to up gradation. It is stated that Clause (V) of the Presidential order is totally different from fixation of pay granted to the applicant. Therefore, no reliance can be placed on such document. However, this Tribunal has relied upon the same and accepted the justification of the respondents for re-fixation of pay and recovery of excess payment. This has caused grave injustice to the applicant.

3.2 It is further submitted that this Tribunal has not dealt with the submission of the applicant that the respondents failed to follow the principles of natural justice since the applicant was not granted any opportunity of hearing by the respondents before

issuance of order of re-fixation of pay and the recovery of excess payment.

- 3.3 It is also contended that the Tribunal failed to consider averments stated in ground 'C' of the OA wherein the applicant had relied upon judgment of Hon'ble Supreme Court passed in the case of Divisional Superintendent, Eastern Railway, Dinapur and Ors v/s L.M. Kashri & Ors reported in 1974 II LLJ 372-B and the judgment passed by Division Bench of the Hon'ble High Court of Gujarat in SCA 5072/91 decided on 14.07.1993, and other judgments referred in ground D, E and F, and stated that it is well settled principle of law that where civil consequences arise, the administration is duty bound to follow the principles of natural justice and fair play even in case of mistakes. It is submitted by the counsel for applicant Mr Pathak that the respondents have neither denied the said averment of the applicant in their reply nor produced any records with respect to due opportunity granted to applicant before issuance of impugned order as per the principles of natural justice. The said submission though argued, was lost sight of by this Tribunal while passing the final order in the OA. Therefore, the order requires to be recalled.
- 3.4 Further, it is submitted that this Tribunal at the time of hearing of the OA was fully convinced and was in favour of the applicant that in the eye of law the principles of natural justice was not followed. However, in the final order by relying on irrelevant judgments and without giving due opportunity to the counsel for the applicant, decided the said issue against the applicant. It is submitted that the Tribunal had lost sight of important points argued by the advocate of the applicant.
- 3.5 Additionally it is also submitted that in para 27 of the order under review, the Tribunal did not consider the case of Rafiq Masih, though the same was relied upon by the applicant and lengthy submission was offered on the point of its applicability. But at the same time, in the said para of the order, referred to the

judgment passed by the Hon'ble Supreme Court in the case of Jagdev Singh and erroneously relied upon the said judgment without verifying the facts of the applicant.

3.6 Further it is submitted that in para-22/23 of the order under review, this Tribunal referred to the judgment of Hon'ble Apex Court in case of Haryana Financial Corporation & Ors v/s Kailashchandra Ahuja reported in (2008) 9 SCC 31, although the said judgment is based on totally different facts. However, without giving an opportunity to the advocate of the applicant to ponder over the said judgment, the order was passed.

3.7 It is submitted that though a request was made by the advocate to stay the operation of the order, however the same was not transcribed in the order. Lastly, the learned counsel for the applicant Shri P H Pathak has referred to the grounds stated in the RA in support of his aforesaid submissions and prayed that the order dated 24.07.2017 passed by this Tribunal be recalled.

4 Per contra, the standing counsel Ms R R Patel appeared on behalf of respondents and opposed the submissions of the applicant on the ground that applicant has suppressed material facts particularly the one that the very applicant aggrieved by the order passed by this Tribunal in OA 458/2014 (which is under review) had approached the Hon'ble High Court by filing SCA 17462/2017. The present respondents had filed their reply in the said SCA and opposed the contention of the applicant. The applicant filed his rejoinder in the said petition. Thereafter the applicant had urged the Hon'ble High Court to permit him to withdraw the petition with a view to make out the application into a review application. Accordingly vide order dated 09.11.2017, Division Bench of Hon'ble High Court disposed of the said petition as withdrawn with a further observation that

“it would be open to the applicant to seek appropriate relief from the appropriate forum qua amount already recovered with interest. In such eventuality it would be open to resist such claim by the department.”

Thereafter, the applicant has filed the present Review application. However in this RA the applicant has not disclosed the above fact about withdrawal of the said SCA. Therefore, applicant has not come with clean hands before this Tribunal. On the sole ground of suppression of material fact, the RA requires to be dismissed, she argued. She mainly made following submissions:-

- 4.1 That this Tribunal had granted ample opportunity to counsel for both the parties and after considering the material on record and the submissions of the counsel for parties, passed the final order dated 24.07.2017.
- 4.2 That this Tribunal in its order had considered the grievance of the applicant about violation of principles of natural justice in the case of recovery of excess payment and the relevancy of undertaking submitted by the applicant. The Tribunal has considered the judgments passed in Rafiq Masih case. This Tribunal has recorded cogent reason for its conclusion. In fact, aggrieved by the order passed by this Tribunal applicant has filed Writ Petition before the Hon'ble High Court wherein no interim relief was granted in favour of the applicant and after filing rejoinder to the reply filed by respondents, applicant has sought permission to withdraw the said SCA.
- 4.3 It is submitted that in the present RA there is no ground on the point of question of law or any apparent error on the face of the record. Therefore, this Review Application is not maintainable.

- 5 Heard the learned counsel for the parties and perused the material on record.
- 6 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) 2 SCC (L&S) 735 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 as 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 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.”*

7 The Hon'ble Supreme Court in an another judgment in the case of *Union of India v/s Tarit Ranjan Das 2004 SCC (L&S) 160* while dealing with the order passed in Review Application at paragraph 13 observed as under:

“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.”

8 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 act as an Appellate Authority in respect of the original order by a fresh re-hearing of the matter to facilitate a change of opinion on merits.

9 In the present case, it is noticed that the ground raised by the applicant in his OA and the submissions/arguments of the counsel for both the parties have been referred by this Tribunal in its order dated 24.07.2017; in para18, this Tribunal has observed as under:

“18 On perusal of the pleadings and documents annexed thereto and upon hearing the learned counsel of both the parties, the points that arise for our consideration are:

(i) Whether the applicant under the Lateral Advancement Scheme having availed placement in higher pay scale of Rs.7500-250-12000 by the order dated 28.04.2003 with effect from 21.12.2002 and got his pay fixed under FR 22(1)(a)(i), is entitled to get his pay fixed once again under FR 22(1)(a)(i) on his promotion as SDE by the order dated 10.03.2003 and assumed higher duties and responsibilities of a superior post functionally.

(ii) Whether re-fixing his pay at the stage of Rs.13,375/- with effect from 10.03.2003 can be annulled on the ground of violation of principles of natural justice.

(iii) Whether the pay fixation under FR 22(1)(a)(i) at the time of promotion as SDE is as per the then existing policy.

(iv) Whether the order for recovery of over payment is bad in view of the judgment in view of judgment of Hon’ble Supreme Court in Rafiq Masih (White Washer) (supra)”

10 In the present RA the main grievance raised by the applicant that this Tribunal has not considered his submissions on the point of violation of principles of natural justice in re-fixation of pay and recovery of excess

amount in the case of applicant, in this regard it can be seen that in para 22 of order dated 24.07.2017, while answering to the question “Whether re-fixing his pay at the stage of 13,375 w.e.f. 10.03.2003 can be annulled on the ground of principles of violation of natural justice, this Tribunal has observed as under:-

Para 22 – Point No. (ii) The other bone of contention of Shri P H Pathak is that the direction of the Corporate Office by its letter dated 29.09.2014 is in violation of principles of natural justice. We cannot afford to lose sight of the fact that pursuant to the direction contained in the Corporate Office letter dated 29.09.2014 by the letter bearing No.A-I/TBP Pay Fixation/Gr.A & B/464 dated 5.12.2014, vide Annexure A/10, the applicant was directed to show cause as to why the over payment of Rs1,31,148/- shall not be recovered on account of his pay being refixed at the stage of Rs.13,375/-. The applicant has replied to the said show cause notice. Before the direction was given effect to, the applicant was given ample opportunity to show cause as to why his pay shall not be refixed at the stage of Rs 13,375/-. The direction is an internal correspondence from one office to another office. Therefore, we hold that the principles of natural justice were strictly adhered to. The contention that no notice was issued is totally wrong and hence the impugned order cannot be interfered on the ground of principles of natural justice. Accordingly Point No. (ii) above is also answered in the negative.”

- 11 The counsel for the applicant also argued that this Tribunal has not considered the judgment passed in the case of Rafiq Masih though it was relied upon by the applicant. In this regard it is noticed that while answering to the question (Point no. (iv)) as stated in para-18 of the order, the Tribunal in para 27 observed that

“.....to substantiate the argument that no recovery can be effected, Shri P H Pathak, relied upon the case of Rafiq Masih (White Washer) (supra), whereas Ms R R Patel placed reliance upon the case of Jagdev Singh (supra). We have carefully gone through the judgment in Jagdev Singh (supra). The judgment in Jagdev Singh (supra) is subsequent to Rafiq Masih (supra) and infact the Hon’ble Supreme Court in Jagdev Singh (supra) referred to its earlier judgment in Rafiq Masih (supra). Referring to the fact that Jagdev Singh had given an undertaking, the Hon’ble Supreme Court held that the judgment in Rafiq Masih (supra) has no application.....”

- 12 It is noticed that in para 28 of the order under review, this Tribunal after considering the law laid down in the case of Jagdev Singh observed that “it is necessary for us to ascertain the fact whether applicant had given any undertaking at the time of fixing his pay under FR 22(1)(a)(i) on his promotion as SDE by the order dated 20.03.2003, vide Annexure A/5. We have perused the order of promotion dated 20.03.2003, certain

terms and conditions were attached to the said order of promotion. Condition no.8 of the promotion order dated 20.03.2003 is as under:-

“8. A declaration “for any excess pay in advertantly by the BSNL on this promotion prospect will be repaid” should also be exercised.”

In fulfilment of the above condition the applicant had given an undertaking dated 05.07.2004 and only thereafter his pay was fixed by order dated 05.11.2004 vide Annexure A/6.

Further in para 29 and 30 it has been observed by this Tribunal as under:-

“Para 29 Condition No. 8 of the promotion order as SDE dated 20.03.2003, vide Annexure A/5, read with the aforesaid undertaking dated 05.07.2004 demonstrate that the applicant whose pay was fixed by giving the benefit of FR 22(1)(a)(i) was clearly put on notice that any payment found to have been made in excess would be required to be refunded. He had furnished the undertaking dated 05.07.2004 while opting for the fixation of pay pursuant to his promotion dated 20.03.2003 as SDE. He is bound by the undertaking. Therefore we are in agreement with the submission of Ms R R Patel and decline to interfere with the direction of the Corporate Office to recover the excess payment. Accordingly Point No.(iii) is also answered in the negative.

30 For the foregoing, we hold that the applicant is not entitled for any of the relief sought by him. The OA deserves to be dismissed. Accordingly the same is dismissed. Interim order granted on 11.12.2014 stands vacated. There shall be no order as to costs.”

- 13 It is noticed that answering to points/questions stated in para-18 of the order which is referred hereinabove, this Tribunal by recording cogent reasons, including the reason about relevancy of the undertaking submitted by the applicant before the respondents and by considering the judgment relied upon by the counsel for applicant finally recorded its findings with regard to adherence of principles of natural justice and concluded that the OA had no merit and accordingly same was dismissed.
- 14 It can be seen from the above factual matrix that it cannot be said that submissions of the applicant (who is a group ‘B’ employee and still in service) in support of the prayer sought in the OA were not considered by the Tribunal. In our considered view the ground and submission of the applicant in the present Review Application is in nature of appeal

against the judgment of this Bench. This Tribunal cannot sit in appeal on its own judgment. Therefore, the grounds stated by the applicant in this Review Application is not tenable to exercise the power of review.

- 15 Thus, in view of above discussion and in light of the law laid down by Hon'ble Apex Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* and also in the case of *Union of India v/s Tarit Ranjan Das* (supra), the applicant has failed to point out any error much less an error apparent on the face of 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.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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