

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Review Application Nos.26/2017 in OA No.221/2017
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)**

Jagdishkumar Keshavlal Patel,
Male, aged about 50 years,
Residing at: 6, Candramani Bunglow vi2,
Nr. Swastik School, Motera,
Ahmedabad – 380 005. ... Applicant

By Advocate Shri P H Pathak

V/s

- 1 Bharat Sanchar Nigam Ltd,
Notice to be served through:
The Chairman & Managing Director,
Bharat Sanchar Nigam Ltd,
New Delhi – 110 001.
- 2 The General Manager,
Gujarat Circle, Bharat Sanchar Nigam Ltd,
C G Road, Ahmedabad – 380 006.
- 3 Accounts Officer,
Office of Chief General Manager, (Salary),
Ahmedabad Telecom District,
9th Floor, Telephone Bhavan,
C G Road, Ahmedabad-6. ... 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 221/2017 (who is a group 'B' employee and still in service) seeking recall of order dated 17.08.2017(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 applicant was promoted to the post of SDE (Group B) on regular basis by order dated 04.01.2002, who is still in service. One of applicant's junior namely Shri Ramjibhai V Rafalia (herein after referred as R V Rafalia) who was promoted on 10.03.2003 as SDE was drawing higher pay than many of his seniors. Hence, senior to the said Shri R V Rafalia had represented to the respondents to step up their pay w.e.f. 10.03.2003. Considering such representations, the pay of applicant also came to be refixed at Rs.13,675/- at par with the pay of his junior Shri R V Rafalia with the condition that "the sanction for stepping up of pay is subject to clarification received from BSNL/DoT".

Thereafter following the clarification issued vide its office order dated 29.09.2014 by the Corporate office of BSNL the pay of the said Shri R V Rafalia stepped down and accordingly his pay was fixed at the stage of Rs.13,375/- w.e.f. 10.03.2003 and that he was directed to credit the excess overpayment. Accordingly vide order dated 30.03.2017 the pay of applicant was also regularised from 10.03.2003 to 31.03.2017 with a direction to remit the overpayment of Rs.2,46,805/- towards overpayment made to him. Aggrieved by the said order dated 31.03.2017 of refixation of pay and direction for recovery of overpayment, the applicant herein had filed OA 221/2017. The said OA came to be dismissed vide order 17.08.2017. Against the said order dated 17.08.2017 present RA is filed seeking following reliefs:-

- "(A) The Hon'ble Tribunal be pleased to recall the order dated 17.08.2017 in OA 221/2017 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 17.08.2017 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 had decided the case of applicant as per the case of Shri R V Rafalia (OA 458/2014 decided on 24.07.2017). Against the said order dated 24.07.2017 separate RA No.20/2017 has been filed. This Tribunal lost sight to consider the submissions of the applicant in the OA that the order impugned in the original application was unilateral decision and without offering an opportunity of being heard the respondents had revised the pay of applicant and decided to recover excess payment said to be paid to the applicant. The judgment relied upon by the applicant are not reflected at all in the order under review.
- 3.2 The applicant has categorically contended in the OA that the junior to the applicant Shri Rafalia was drawing pay in the same scale of the applicant till July/August 2017. Therefore, there cannot be a decision to reduce the pay of the applicant and effect recovery and that too with retrospective date. However, the said contention are not reflected anywhere in the order passed by this Tribunal and in mechanical way the case of Rafalia is relied by this Tribunal.
- 3.3 The grounds stated in para (a) to (e) of the OA is not reflected in the order under review.
- 3.4 The Tribunal has erroneously observed that applicant's pay was regularised from 03.03.2017. The question of regularising the pay of applicant does not arise as Mr Rafalia was junior drawing more pay. The Tribunal erroneously observed that the facts are not in dispute. It is submitted that till the applicant had filed his OA, there was no change in pay of Mr Rafalia. It is further submitted by the counsel for the applicant that the observation of the Tribunal in para 11 in the order dated 17.08.2017 is not correct.
- 3.5 Though applicant had not relied and cited the judgment passed in the case of Jagdev Singh however this Tribunal has relied upon

the same and no opportunity of being heard was given to the advocate of the applicant.

3.6 It is submitted that there is a factual mistake committed by the Tribunal. The judgment cited in para 19 of the order was not at all cited nor is it applicable to the present case. No opportunity was given to the advocate of applicant. The conclusion arrived in the said para is also erroneous since it is observed that non observance of natural justice is not prejudicially affect the applicant, on the contrary in the present case the pay of the applicant was adversely affected as recovery was also affected. Therefore, the order is ex facie erroneous hence this RA.

3.7 It is further contended that this Tribunal failed to consider the submission of the applicant that the copy of the undertaking dated 05.07.2004 of applicant of OA 458/204 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.

Learned Counsel for the applicant also argued 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.

4 Per contra, the standing counsel Ms R R Patel appeared on behalf of respondents and opposed the submissions of the applicant. It is submitted that the applicant's pay was stepped up since his junior Mr Rafalia was granted higher pay but later on the pay of Mr Rafalia was stepped down consequently the pay of applicant was also regularised accordingly. The OA filed by the said Mr Rafalia was dismissed by this Tribunal vide order dated 24.07.2017 and aggrieved by it the applicant filed SCA No.17462/2017 before the Hon'ble High Court of

Gujarat. No interim relief of any nature was granted to the applicant by the High Court. Subsequently, after filing of reply and rejoinder, the applicant sought permission to withdraw the said SCA with liberty to file Review before this Tribunal. Accordingly the said SCA came to be disposed of as withdrawn vide order dated 09.11.2017 granting liberty to file review. Thereafter, said Mr Rafalia has filed RA 20/2017 before this Tribunal the same was listed together with present RA.

- 4.1 It is further submitted 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 in OA 220/2017 was passed on 17.08.2017.
- 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.
- 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 17.08.2017. It is apt to mention that in para 14, this Tribunal has considered the judgment relied upon by the counsel for the applicant i.e judgment passed in the case of State of Punjab v/s Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 as also the judgment relied upon by the respondents Ms Roopal Patel i.e. High Court of Punjab & Haryana & Ors v/s Jagdev Singh (Civil Appeal No.3500/2006) and recorded their findings in para 14 to 17. It is also noticed that in para 18 and 19 this Tribunal has discussed the submission of applicant with regard to adherence of principles of natural justice and recorded its findings on said issue.
- 10 It can be seen from the above factual matrix, 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 ground stated by the applicant in this Review Application is not tenable to exercise the power of review.

11 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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