

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

RA Nos. 16, 17, 18 19 & 20 of 2020

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

RA No.16 of 2020

1. Union of India represented through its Secretary, Ministry of Defence, Defence Research & Development Organization, Sena Bhawan, New Delhi.
2. The Director General & Scientific Adviser to Raksha Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi.
3. The Director, Integrated Test Range, At/Po- Chandipur, Dist-Balasore, Pin-756025.

.....Review Applicants

VERSUS

Sri Bhaskar Tarai, aged about 58 years, S/o Late Suryamani Tarai, At/Po- Mahu, Via- Namauja, PS- Aul, Dist-Kendrapara, Pin-754231, (Ex-Senior Technical Assistant 'B' of ITR, Chandipur).

.....Respondent.

RA No.17 of 2020

1. Union of India represented through its Secretary, Ministry of Defence, Defence Research & Development Organization, Sena Bhawan, New Delhi.
2. The Director General & Scientific Adviser to Raksha Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi.
3. The Director, Integrated Test Range, At/Po- Chandipur, Dist-Balasore, Pin-756025.

.....Review Applicants

VERSUS

Susama Mohanty, aged about 62 years, W/o Late Nitya Gopal Mohanty, At/Po-Jagannathpuyr, PS-Bhadrakm, Dist. Bhadrak, Pin-756100.

.....Respondent.

RA No.18 of 2020

1. Union of India represented through its Secretary, Ministry of Defence, Defence Research & Development Organization, Sena Bhawan, New Delhi.
2. The Director General & Scientific Adviser to Raksha Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi.
3. The Director, Integrated Test Range, At/Po- Chandipur, Dist-Balasore, Pin-756025.

.....Review Applicants

VERSUS

Sri Jayanta Kumar Ranjit, aged about 61 years, S/o Late Dhruba Charan Ranjit, (Ex-Medical Attendant of IITR, Chandipur) At-Bhoisahi (Near Central School East Gate), Po-Balasore, PS-Sahadev Khunta, Dist-Balasore, Pin-756001.

.....Respondent.

RA No.19 of 2020

1. Union of India represented through its Secretary, Ministry of Defence, Defence Research & Development Organization, Sena Bhawan, New Delhi.
2. The Director General & Scientific Adviser to Raksha Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi.
3. The Director, Integrated Test Range, At/Po- Chandipur, Dist-Balasore, Pin-756025.

.....Review Applicants

VERSUS

Sri Uttam Charan Lenka, aged about 62 years, S/o Late Purna Chandra Lenka, At-Kundigan, Po-Bachhalo, Ps-Uaugan, Dist. Jagatsinghpur, Pin-754113, (Ex-Security Assistant 'C' of ITR, Chandipur).

.....Respondent.

RA No.20 of 2020

1. Union of India represented through its Secretary, Ministry of Defence, Defence Research & Development Organization, Sena Bhawan, New Delhi.
2. The Director General & Scientific Adviser to Raksha Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi.
3. The Director, Integrated Test Range, At/Po- Chandipur, Dist-Balasore, Pin-756025.

.....Review Applicants

VERSUS

Sri Gopinath Das, aged about 66 years, S/o Late Rudra Charan Das, (Ex-Technical Assistant 'B' of ITR, Chandipur) At- Fakir Mohan Nagar, PO-Balasore, PS-Balasore Town, Dist-Balasore, Pin-756001.

.....Respondent.

For Review Applicants : Mr. S. S. Behera, counsel (in all the RAs)

For Review Respondents : Mr. S.K. Ojha, counsel (in RA nos. 18,19 & 20 of 2020)

Heard & reserved on : 23.09.2020

Order on : 29.09.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

These Review Applications (in short RAs) have been filed by the review applicants (respondents in respective OAs) under Section 22(3)(f) of the Administrative Tribunals Act, 1985 on identical grounds impugning the orders of

the Tribunal passed in the respective OAs seeking to review the orders. Since all the RAs involve similar facts and dispute and involve identical question of law, these were considered together and are being disposed of by this common order, for which the facts of the RA No. 18 of 2020 are considered.

2. The facts leading to filing of the RA No. 18/2020 are that the review respondent (applicant in OA No. 393/2009) had filed the OA before this Bench of the Tribunal challenging the order of the review applicants to reject the claim of one additional increment for undergoing sterilization operation and adopting small family norms. The review applicants defended the rejection of the claim since the concerned employees were ex-servicemen reappointed after retirement from the military service and for them the provision of additional increment for adopting small family norm was not permissible in view of the circular dated 2.9.2002, copy of which was enclosed with the Counter to the OA. After hearing the parties, this Tribunal allowed the OA No. 393/2009 alongwith OA Nos. 391, 392, 394 & 395 of 2009) vide the common order dated 22.7.2010 (Annexure-2 of the RA) and the aforesaid order was passed by following the order of Bangalore Bench of the Tribunal allowing similar claims.

3. Being aggrieved by the order dated 22.7.2010 of the Tribunal, the review applicants filed the W.P. (C) No. 12560/2011 before Hon'ble High Court. Vide order dated 14.11.2019 (Annexure-3 of the RA), Hon'ble High Court disposed of the said writ petition as withdrawn with the following observations:-

“However, it is directed that if the petitioners approach the learned Tribunal by filing review petition along with an application for condonation of delay within a period of four weeks from today, learned Tribunal shall take into consideration all the contentions raised by the petitioners. While considering the prayer for condonation of delay, learned Tribunal shall also take into consideration the period of pendency of this writ petition, i.e. from 05.05.2011 till today.”

4. As per the direction of Hon'ble High Court, the review applicants have filed the RA No. 18/2020 on 4.8.2020 alongwith the MA for condoning the delay in filing the RA. In the MA, it is stated that after receipt of the copy of the order dated 14.11.2019 of Hon'ble High Court by the respondent no.3 on 11.12.2019, legal opinion from higher departmental authority was obtained before filing this RA. It is also stated that the delay was not deliberate or intentional.

5. The MA filed for condoning the delay is considered first. Learned counsel for the review applicants, on being to explain why the RA could not be filed within

four week time allowed by Hon'ble High Court vide order dated 14.11.2019, submitted that there was delay in obtaining approval of higher authorities to file the RA due to the situation arising out of covid-19 pandemic. It is noticed that in the MA, no explanation has been furnished to explain the reason as to why the RA could not be filed within four weeks from 11.12.2019 when the copy of the order dated 14.11.2019 was stated to have been received by the respondent no.3. The submission of learned counsel that it was due to covid-19 is not acceptable since in the month of December, 2019 and January, 2020 there was no problem of covid-19 pandemic which started in India from the month of March, 2020. Hence, the reason for not filing the RA within the time stipulated in the order dated 14.11.2019 (Annexure-3 of the RA) is not at all convincing, for which, it is not possible to condone the delay in filing the RA as prayed for in the MA.

6. However, learned counsels for the review applicants as well as the review respondents were also heard on merit of the RA. It was agued by learned counsel for the review applicant that while passing the impugned order dated 22.7.2009 (Annexure-2 of the RA), this Tribunal did not consider the circular dated 2.9.2002 of the Ministry of Finance (circulated vide letter dated 18.9.2002, copy of which is enclosed at Annexure-1 of the RA), which was also enclosed with the Counter filed by the review applicants in the OA and the impugned order has been passed relying on the judgment of Bangalore Bench of this Tribunal copy of which was enclosed at Annexure-4 to the OA. Learned counsel for the review respondents submitted that the Tribunal has taken note of the said circular dated 2.9.2002 of the Ministry of Finance while passing the impugned order and hence, the grounds mentioned in the RA cannot be legally valid ground for reviewing the impugned order.

7. The grounds advanced in the RA as stated in para 12 and 13 of the RA are that if a person has undergone sterilization operation during previous employment prior to his re-employment, he will not be entitled to the incentive for adopting small family norm as per the clarification of the Ministry of Finance. Tribunal in OA No. 393/2009 has passed the order without appreciating the aforesaid facts and hence, it is illegal. It is noted that in para 7 of the RA, it is stated that the review applicants had taken the same ground in the Counter filed in OA No. 393/2009 and such ground has been rejected by the Tribunal while passing the impugned order dated 22.7.2010 (Annexure-2 of the RA). In other words, the ground urged in the RA is the same as the ground in the Counter filed in the OA.

8. It is the settled position of law that in a review, re-appreciation of the arguments already considered in the OA is not permissible. Under section 22(3)(f) of the Administrative Tribunals Act, 1985, the Tribunal can review its own order under the provisions of the Civil Procedure Code, 1908 (in short CPC). In this regard, the rule 1 of the Order 47 of the CPC provides 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.”

9. In the light of the above provisions of the CPC, a review application can be entertained by the Tribunal on the ground of error apparent on the face of record or new facts / matter, not known at the time of hearing of the OA. In the case of **State of West Bengal and Others v. Kamal Sengupta and another reported in (2008) 8 SCC 612**, Hon’ble Supreme Court has laid down following principles to be kept in mind while considering applications for reviewing the Tribunal’s orders:-

“(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 of 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.”

10. Hon’ble Supreme Court in the case of **Rajendra Kumar and others Vs. Rambhai and others, reported in (2007) 15 SCC 513** has considered the question of review and its maintainability and has held as under: -

“6. The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgement/order cannot be disturbed.”

11. Similarly in the case of **Inder Chand Jain (Dead) through Lrs, Vs. Motilal (dead) through Lrs. reported in (2009) 14 SCC 663**, Hon’ble Supreme Court has held as under:-

“..10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. mIn Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held :

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.”

12. The position of law regarding review under Order 47 Rule 1 of CPC has been examined in the judgement of Hon’ble Supreme Court in the case of **Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301** and after considering the previous judgments in this regard, it was held as under:-

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* JT 2013 8 SC 275.

20.2 When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

13. In **Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596**, Hon’ble Apex Court reiterated the power of review of the Tribunal with following observations:-

“30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under section 114 read with order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. 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. It may be pointed out that the expression ‘any other sufficient reason’ used in order 47 rule 1 means a reason sufficiently analogous to those specified in the Rule.

31. Any 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.

14. From above discussions and applying the settled position law as per the judgments cited above, it is clear that review of Tribunal's order is permissible under section 22(3)(f) of the Administrative Tribunals Act, 1985 if there is an error apparent on the face of the record, or if there are some new facts which were not in the knowledge of the review applicant at the time of consideration of the OA or for some other reasons analogous to the above stated reasons. When the grounds advanced in support of the RA No. 18/2020 are examined in the light of the principles discussed above, it is noticed that such grounds in RA does not reveal any error apparent on the face of the record, since the ground regarding applicability of the letter dated 2.9.2002 of the Ministry of Finance to the OA was raised by the review applicants in their Counter filed in OA (as stated in para 7 of the RA), which was duly considered by this Tribunal in the impugned order dated 22.7.2010 (Annexure-2 of the RA) passed by this Tribunal in OA No. 393/2009 after following the judgment of Bangalore Bench of the Tribunal, copy of which was annexed at Annexure-4 of the OA. It cannot be said that the Tribunal has overlooked or not considered these factual aspects including applicability of the opinion of the Ministry of Finance raised while passing the impugned order dated 22.7.2010 in OA No. 393/2009.

15. In view of the above discussions, I am of the considered view that the grounds raised in the RA are not legally valid grounds to justify review of the order dated 22.7.2010 (Annexure-2 of the RA) of the Tribunal passed in OA No. 393/2009 and therefore, the RA No. 18/2020 is devoid of merit. Hence, taking note of the discussions in paragraph 5 of this order about the merit of the MA for condoning delay, the said MA is dismissed and the RA No. 18/2020, which was not filed within the time stipulated in the order dated 14.11.2019 (Annexure-3 of the RA) of Hon'ble High Court, is also dismissed both on the ground of delay as well as on merit.

16. Similarly, the MAs filed in all other RAs with identical grounds as the MA in the RA No. 18/2020 are dismissed and all other RAs filed with identical grounds as in RA No. 18/2020 are also dismissed both on the ground of delay as well as on merit. There will no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)