

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH**

RA No. 27 of 2019 (Arises out of OA No. 394/1998 – disposed of on 16.07.2019)

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (A)
Hon'ble Mr. Tarun Shridhar, Member (A)**

1. Shri Sudhansu Sekhar Dalbehera, S/o – Dibakar Dalbehera, Vill/P.O. – Tumandi, Via – Daspalla, Dist – Nayagarh, Pin - 752084.

.....Review Applicant.

VERSUS

1. Ashok Kumar Parida, S/o – Laxman Parida, Vill/PO – Tumandi, Via – Daspalla, Dist – Nayagarh, PIN – 752084

.....Review Respondent

2. Union of India, represented through its Secretary cum Director General of posts, Dak Bhawan, Sansad marg, New Delhi – 110001.
3. Chief Postmaster General, Odisha Circle, At/PO – Bhubaneswar, Dist – Khurda, PIN – 751001.
4. Senior Superintendent of Post Offices, Puri Division, At/Po/Dist – Puri, PIN - 752001

.....Proforma Respondents.

For the applicant : Mr. C. P. Sahani, Advocate

For the respondents: Mr. P. R.J. Dash, Advocate

Mr. N. R. Routray, Advocate

Heard & reserved on : 14.12.2020

Order on : 01.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

In this Review Application, order dated 16.07.2019 passed by this Tribunal in O.A. No. 394 of 1998 is sought to be reviewed by the applicant in O.A with the following prayer:

“ In the above circumstances and reasons, it is therefore most humbly prayed that this Hon’ble Tribunal may graciously pleased to allow this Review Application reviewing/recalling/modifying the final order dated 16.07.2019 passed in OA No. 394/1998 and dismiss the OA as not maintainable.

And may pass any other order(s) as deem fit and proper in the interest of justice.”

2. This Tribunal, after hearing both the sides, vide order dated 16.07.2019 dismissed the O.A. with the following observation:

“7. In view of the above facts and circumstances, the OA is disposed of with a direction to the respondents/competent authority to reconsider the case of the applicant against the post of EDBPM/GDSBPM Tumandi in accordance with the notification dated 19.02.1998 as per the extant rules and instructions of DG, Posts and communicate their decision to the applicant through a speaking order within a period of three months from the date of receipt of the copy of this order. If the applicant is selected for being engaged as EDBPM, Tumandi, then the appointment of respondent No. 3 is to be cancelled if he is still continuing as EDBPM, Tumandi and the applicant will be engaged in his place.

8. The OA is accordingly disposed of. No order as to costs”

3. The applicant has averred in RA that Review Respondent had filed OA No. 394/1998 challenging the selection and appointment of the applicant against the post of EDBPM, Tumandi BO and while the matter was pending since 1998, this Tribunal issued notice vide Annexure R/1 was issued to the applicant with the copy of OA with direction to file reply along with supported documents before the Tribunal within 30 days of receipt of notice. The applicant submits that it was further clarified in the notice that in case of default, the said application may be heard and decided in the absence of the applicant. The review applicant further submitted that the notice was received by him on 03.07.2019 (Copy of the envelope of the notice and track consignment of the registered letter are annexed as Annexure R/2) but since he had no contact with the previous counsel and he came to know from his new counsel that hearing in the OA was concluded and matter was reserved on 10.07.2019. The applicant submitted that therefore he had no opportunity to contest his case in the aforesaid OA and the final order was pronounced on 16.07.2019 (Annexure R/3). It is further submitted by the applicant that during the hearing of the OA the entire reservation policy for ED (now GDS) employees existed and adopted by the Govt. of India, Department of Posts has been misplaced and suppressed and that as per the reservation policy existed at the time of issuance of the notification at Annexure R/4, no roster point system has been maintained for the ED agents as per the decision of Govt. of India, Department of posts.

The applicant submitted that D.G.P & T, letter dated 08.03.1978, 08.10.1980 (Annexure R/5 series) & DG Posts letter dated 05.10.1994 (Annexure R/6) which deals with preferential reservation policy had been suppressed during the time of hearing. The applicant further submitted that he belonged to OBC category as per Govt of India resolution dated 19.10.1994 (Annexure R/7 series) and thus the contention of Review Respondent No. 1 is not correct and the applicant belongs to the OBC category and he was selected and appointed strictly in accordance with the Govt. Policy/Rule.

4. The Review Applicant has filed the present review application on the following questions of law:

1) That when the reservation policy for ED Agents (now GDS) provides preference should be given to the reserved category candidates i.e. ST/SC/OBC over the other candidates and accordingly notification was made, then without challenging the policy of the Govt. itself and in absence of any rule contrary to the said provision, can the appointment of the review applicant be held as illegal?

2) That when the review respondent (applicant in OA) with full knowledge of the terms and conditions of the notification applied for the post, participated in the selection process and could not be successful then can he be allowed to challenge/raise question in respect of the said notification?

6. In his counter, Review Respondent No. 1 inter alia averred that the applicant was given 20 years time to submit his reply

and he had got notice to appear in the case number of times but he failed to take any step in the OA in that period and after the order of Tribunal went against him he has filed this RA. It is submitted by him that the review applicant could have filed all the reservation policy or notification reserving the post specifically for OBC and other record while the hearing of the OA in question. It is further submitted that the post was not earmarked for any category and only stipulation was that preference will be given to ST/SC/OBC candidate and that does not mean that post is reserved for OBC candidate and since notification was issued inviting applications from all category and stipulating to give preference to ST/SC/OBC which means when everything is equal then preference will be given to reserve category candidate but in the instant case the review applicant had secured the lowest mark and respondent no. 1 had secured highest mark and both belongs to same cast the authority cannot go beyond the advertisement and the observation of DG Post cannot override the settled principle of law regarding reservation and to conduct the selection as per the advertisement.

7. In their reply to objection filed by Review Respondent No. 1 the Proforma Respondents submitted that clarification regarding reservation of SC/ST/OBC in the matter of appointment to ED post vide letter dated 23.12.1997 (Annexure R/6 of the OA) and the proforma respondents have acted as per the above circular and clarification made by the Review Respondent No. 1 is out of his own notion and he cannot impose his own notion of

preference during recruitment on the department. It is further submitted that the Review Applicant was otherwise eligible for the post and securing lowest mark amongst all candidates does not sum up disqualification of his candidature and since the post in question was earmarked for ST/SC/OBC category in descending order the selection was made out of OBC category as ST/SC candidates did not qualify for the said post.

8. The Review Applicant in his reply to the counter filed by the Review Respondent No. 1 has raised the same ground as made in the RA.

9. This Tribunal is aware of limited scope of review of its own order. It has been held by the **Hon'ble Supreme Court in case Kamlesh Verma v. Mayawati and others, 2013(4) RCR (Civil) 75** that the review application is maintainable on the following grounds:

- 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.

Further, in the above said ruling, various situations have been described where review will not be maintainable and the said situations are enumerated as under;

- 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 re-heard 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 negative.

7. In the present case the review applicant was originally represented by one counsel but no counter was filed by him in the said OA for reasons best known to the Review Applicant. This Tribunal is not satisfied that there was any compelling circumstances by which he was prevented from not filing counter in the said case. In spite of that after filing of one petition for amendment i.e. for addition of official respondent, most probably for abundant precaution, in order to given the review applicant to file objection to the said petition, notice was sent to him. It is claimed by the review applicant that he received the said notice on 03.07.2019. No explanation is forthcoming from the side of the review applicant as to why he did not immediately make application before the Tribunal for making any prayer or document in the original OA, although it has been mentioned by him in the review application that the matter was reserved on 10.07.2019. The final order was pronounced on 16.07.2019. The

grounds as taken by him in the review application does not come under the scope of review by this Tribunal. That apart the applicant having being given due and reasonable opportunity to put forth this case in the OA in question and that having not been done by him, this Tribunal finds Review Application to be devoid of merit.

8. Accordingly the RA is dismissed but in the circumstances without any order to cost.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)