

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH**

RA No. 10 of 2020 (Arises out of OA No. 260/698/2017 – disposed of on 12.02.2020)

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Shri Pravash Kumar Sahoo, aged about 63 years, Son of Late Baikuntha Nath Sahoo, resident of Plot No. 882/1423/2396, Bhagabat Sandhana, Canal Road, GGP, Bhubaneswar – 751025, Dist. – Khurda, Odisha.
2. Smt. Sanghamitra Pattnaik, aged about 61 years, Wife of Dusmanta Das, resident of Plot No. 184/2643, Jagamara, Khandagiri, Bhubaneswar-751030, Dist- Khurda, Odisha.
3. Om Prakash Rath, aged about 62 years, Son of Late Srivatsa Rath, resident of Vill/P.O. – Asureswar, Dist – Cuttack – 754209, Odisha.
4. Pradeep Kumar Sahu, aged about 61 years, Son of Late Raghunath Sahu, resident of Plot No. 618, Aerodrum Area, Lane-10, Bhubaneswar-20, Dist- Khurda Odisha.
5. Smt. Manjula Kunar, aged about 63 years, D/O- late Chakradhar Kunar, resident of quarter No. Type-II/54, Census Colony, Baramunda, Bhubaneswar-751003, Dist-Khurda, Odisha.
6. Suresh Chandra Sahoo, aged 62 years, S/o Late Benudhar Sahoo, resident of Type-II-10, Census Staff Quarters, Baramunda, Bhubaneswar-3, Dist-Khorda, Odisha.
7. Pramod Kumar Panda, aged about 63 years, Son of Late Bhramarbara Panda, resident of quarter no. L-43/ GGP Colony, Rasulgarh, Bhubaneswar – 751025, Dist-Khurda, Odisha.
8. Padmanav Sahu, aged about 63 years, Son of Late Abhimanue Sahu, resident of quarter No. Type-III/8, Census Colony, Barmaunda, Bhubaneswar-3, Dist- Khurda Odisha.
9. Ajaya Kumar Mohapatra, aged about 64 years, Son of Late Radheshyam Mohapatra, resident of Quarter No. 11/10, Census Colony, Barmaunda, Bhubaneswar-3, Dist-Khurda Odisha.
10. Dilip Kumar Mohapatra, aged about 64 years, son of Chintamani Mohapatra, resident of LIG -63, K6(A), Kalinga Vihar, Bhubaneswar – 751019, Dist-Khurda, Odisha.

11. Sasanka Sekhar Pattnaik, aged about 67 years, Son of Jagabandhu pattnaik, resident of Gayatri-6, Vastu Vihar, Bhubaneswar, Dist-khurda, Odisha.
12. Akhila Chandra Sahoo, aged about 65 years, Son of Late Bansidhar Sahoo, resident of manchanath Enclave, P.O. – Mancheswar, Plot No. 2357, Flat No. 305, Bhubaneswar – 751 017, Dist-Khurda, Odisha.]
13. Jasobanta Sahoo, aged about 62 years, son of late Ramesh Chandra Sahoo, resident of Plot No. L/13, Phase-I, Dumduma HB. Colony, Bhubaneswar-7510019, Dist-Khurda, Odisha.
14. Rabindra Kumar Sethy, aged about 62 years, son of Late Purna Chandra Sethy, resident of quarter No. Type-3/2, Census Colony, Barmaunda, Bhubaneswar-3, Dist-Khurda Odisha.
15. Smt. Subhashree Mishra, aged about 60 years, D/o Late Sukanta Kumar Mishra, resident of Srikunj, Sriram City, Plot No. 981/2041, Cannal Road, GGP, Bhubaneswar-25, Dist-khurda, Odisha.

.....Review Applicant.

VERSUS

1. Registrar General of India & Census Commissioner, 2/A, Mansingh Road, New Delhi – 11.
2. Under Secretary, Office of the Registrar General of India, 2/A, Mansingh Road, New Delhi – 11.
3. Director, Census Operations of Odisha, Unit-IX, Janpath, Bhubaneswar-751022, Dist. Khorda.
4. Assistant Director, Office of Registrar General of India, 2/A, Mansingh Road, New Delhi – 11.
5. Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, North Block, New Delhi – 110 001.

.....Review Respondents.

For the applicant : Mr. N. R. Routray, Advocate

For the respondents: Mr. D. K. Mallick, Advocate

Heard & reserved on : 02.11.2020

Order on : 24.11.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

In this Review Application, order dated 12.02.2020 passed by this Tribunal in O.A. No. 698 of 2017 is sought to be reviewed by the applicant in R.A. In the O. A., the applicant had approached this Tribunal seeking for the following reliefs:

- i) To quash the letter dated 29.04.2015 under Annexure-A/9.
- ii) And to quash the order of rejection dated 02.09.2016 under Annexure – A/13,
- iii) And to direct the respondents to grant 2nd Financial upgradation under ACP Scheme to the applicants in PB-2 with GP of Rs. 5400/- from the date of entitlement at par with beneficiaries under Annexure-A/10 dated 18.01.2016.
- iv) And to direct the Respondents to pay the differential arrear salary from the date of entitlement to till the date of actual payment.
- v) And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice..

2. The applicant has sought the following relief in the RA application:

- i) The order dated 12.02.2020 passed in OA No. 698/2017 may be reviewed.

3. This Tribunal, after hearing both the sides, vide order dated 12.02.2020 dismissed the O.A. No. 698/2017 with the order as under:

"17. From the above, it is clear that the point to be decided in this O.A. is no longer res integra. Since the CAT, Patna Bench has already decided the matter regarding entitlement of the applicants to 2nd ACP in the scale of Rs. 15650-39100 with GP Rs. 5400/- having interpreted the circular dated 15.04.2015 issued by the Registrar General of India & Census Commissioner, which is the subject matter of consideration herein, in our considered view, the applicants having not possessed the prescribed educational qualification for the post of Assistant Director, are not entitled to get the benefit of 2nd ACP which is granted against the promotional post in the hierarchy.

18. For the reasons discussed above, the O.A. being devoid of merit is dismissed, with no order as to costs."

4. The applicant has averred the following grounds for relief in the Review application:

1. That the applicant along with written notes of argument dated 26.11.2019 had filed copy of the citation relied upon.

But, from the order dated 12.02.2020 it appears that this Hon'ble Tribunal has not taken the decisions relied upon by the appellants along with written notes of argument, rather relied upon the decisions filed earlier.

2. That had the two decisions i.e. CA No. 3562 of 2007 in case of M.N. Raghunath Kurup & Others Vrs. Union of India & Ors. and in O.P. (CAT) No. 121 of 2016 in case of Union of India Vrs. K. Vijaybhanu, then the order could have been different.
3. That the appellant in their written notes have specifically stated as follows:

11. That, the Respondents by filing counter in reply to the list of citations have relied upon the order of Hon'ble CAT, Patna bench passed in OA No. 456 of 2013 and order of Hon'ble High Court of Patna in Civil Writ Jurisdiction Case No. 6154 of 2017 as well as Order dated 4.7.2019 passed by Hon'ble CAT, Kolkata Bench. The order passed in OA No. 456 of 2013 though belongs to employees of the applicant's department, but the said order is not applicable for adjudication of this present Original Application on two grounds i.e.

(i) The facts of OA No. 456/2013 and this OA are different as because the Respondents in this OA have enclosed their note sheets dtd. 06.01.2016 & 04.02.2016 wherein they have recommended their case for grant of 2nd financial upgradation under ACP Scheme.

And

(ii) The law laid down on the issue referred above at para-5, 6 &7 have not brought to the notice of the Hon'ble Patna Bench. When the order passed in OA No. 456 of 2013 is not applicable to this case, then the order passed in CWJ No. 6154 of 2017 has no bearing for adjudication of the grievance of the applicants.

4. That during course of hearing it was specifically pleaded that by amending the recruitment rule the respondents had given appointment as because they were lacking the actual qualification required for the post of Data Entry Operator, Grade B. A question put by the Hon'ble Bench to show the order and accordingly Annexure A/2 (page25) to the Original Application was placed before the Bench. Hence, the finding given at Para-12 of the order dated 12.02.2020 is beyond the record.
5. That in view of the principle decided by the Hon'ble Apex Court in case of M.N. Raghunath Kurup & the judgment of Hon'ble High Court of Kerla in case of Union of India Vrs. K. Vijayabhanu, the order passed by the Hon'ble CAT, Patna Bench is per incuriam. Moreover, the order of Patna Bench cannot supersede the law decided by the Hon'ble Apex Court. Hence, the order dated 12.02.2020 needs to be

review by taking into account the judgment law relied upon at Para-5 & 6 of the written notes.

4. The respondents in their counter affidavit averred that the applicant were denied financial up gradation under ACP scheme because as per para 6 of DOP&T OM dated 09.08.1999 financial up-gradation under ACP scheme is to be granted subject to fulfilling all the criteria required for promotion to that post in which financial upgradation is to be given. The applicants were appointed during 1982-84 whereas the post of Assistant Director (DC) was created in 2001 and RR of that post was published on 15.04.2002 to the question of putting a new condition of having qualification does not arise. It is further submitted that Hon'ble CAT Patna Bench in OA No. 456/2013 passed the judgment dated 23.02.2017 in favour of the respondents stating that "**there is no ambiguity in the ACP scheme that an employee has to fulfil all the norms of promotion for getting ACP. The ACP does away with the need for having regular posts, but it does not do away with the requirement of fulfilling the promotion norms.**" Hon'ble High Court of Patna in Civil writ Jurisdiction Case No. 6154 of 2007 (filed by the applicants challenging the CAT Patna Bench order dated 23.02.2017) the Hon'ble High Court vide order dated 01.08.2017 passed the judgment in favour of the Respondent stating that "**In sum, therefore, this Court comes to the considered opinion that the Tribunal has not been in error in rejecting the claims of these petitioners, because**

these petitioners' litigation was more of a speculation, rather than for enforcement of any right, which have been affected by non-decision, of giving them the pay-scale of Assistant Director, the next higher post."

5. 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.

5. The other points raised in the RA at para no. 7 & 8 those aspects are not required to be considered in the review application as the same do not come within the scope of review of this Tribunal in this RA, as the matter has been dealt in detail while passing the final order in OA in question. The citations i.e. AIR 2008 SC 1101 in Food Corporation of India & Anr. vs M/s Seil Ltd relied by review applicant in this case are not applicable to facts and circumstances of this case.

6. This Tribunal has carefully gone through the final order dated 10.02.2020 passed by us in OA No. 698/2017. In the said judgment several citations and decisions relied upon by the parties besides other decision has been discussed in details. In the decision of Hon'ble Supreme Court passed in SLP (Civil) No. 17131-17132 of 2008 vide order dated 06.01.2009 while dismissing the SLP had passed the following orders: “ Delay

condoned. The special leave petition is dismissed. However this order may not be treated as precedent.” The said judgment has been referred in para 7 of the order in question passed by us in the OA. It is a fact that the applicant in his written submissions filed on 26.11.2019 had relied upon few decisions including the decision of Hon’ble Supreme Court passed in Civil Appeal No. 3562/2007 between M. N. Raghunath Kurup & others Vrs Union of India & ors delivered on 13th April 2011. In the said judgment it has been mentioned that “in the ACP scheme which is Annexure P/1 to this appeal nowhere it is mentioned that for getting the benefit of ACP the applicant must possess the qualification of promotional post”. Therefore the fact of the said case was different from the fact of the present case and the said decision even if referred to by this Tribunal in OA would not have changed the ultimate result in the OA, as in the present case it is specifically mentioned in the ACP scheme that for getting the benefit of the ACP the applicant must possess the qualification of promotional post and the said aspect has been discussed in detail by us while passing the final order in the OA in question. The said judgment has been relied upon in the citations OP (CAT) No 121/2016 in the case of Union of India vs. K. Vijaybhanu delivered by Hon’ble High Court of Kerala on 30th October 2018. In the said judgment Hon’ble High Court of Kerala on not accepting the contentions of the learned counsel for Union of India that a scanning of ACP scheme would reveal that, virtually,

such a condition of possession of qualification of the promotional post is incorporated in the ACP scheme and therefore persons not possessing the said qualifications are ineligible to get the benefit of the ACP scheme. This Tribunal has gone through other decisions relied upon by the learned counsel for the review applicant in the OA including the decision of the Hon'ble High Court of Himachal Pradesh passed on 04th March 2011 in CWP No. 5683 of 2010 between Krishan Chand Verma Vs. Union of India & ors , AIR 2002 SC at Page 843 Subroto Acharjee & ors vs. Union of India & anr., AIR 2002 page 834 State Financial Corporation & ors vrs Jagdamaba Oil Mills & anr and finds that the facts and circumstances are different from the facts and circumstances of the case which was before us in the OA and therefore those decisions are not necessary to be specifically referred in the final order passed by this Tribunal, in view of the elaborate discussions on the point of law and facts as seen from the record. It appears from the said decision that in the facts and circumstances of the said case there was no stipulation for possessing any particular qualification in order to be eligible to get the benefit of the ACP Scheme. The binding effect of the decision passed by Hon'ble High Court of Himachal Pradesh, which was unsuccessfully challenged by the Union of India before the Hon'ble Supreme Court in SLP (Civil) No. 17131-17132 of 2008, cannot be ignored. Therefore this Tribunal is satisfied that in the facts and circumstances of this case, there has been no

error apparent on the face of record and the ultimate result in the OA would not have been different even though those two decisions would have been referred in the final order in question. Besides that we are not satisfied that there are any justifiable reasons to review the order in question as per the grounds mentioned by the review applicant in this RA. Therefore it is seen that there is no error apparent on face of record and there is no sufficient reason to review the final order passed in the OA in question. Hence the RA is devoid of merit and accordingly dismissed but in the circumstances without any cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)