

**CENTRAL ADMINISTRATIVE TRIBUNAL****CUTTACK BENCH**

**RA No. 10 of 2019 (Arises out of OA No. 260/650/2016 – disposed of on 21.01.2019)**

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

1. Shri Amiya Shankar Behra, aged about 40 years, son of Sri Bholanath Behera, at present working as Junior Telecom Officer, Office of the SDO Phone-VII, 8/B Jaydurga nagar, Bhubaneswar-751006, and residing in Plot No. 58, 1<sup>st</sup> floor, Jayadurga Nagar, Bhubaneswar-751006.

.....Review Applicant.

**VERSUS**

1. The Chairman cum Managing Director, Bharat Sanchar Nigam Ltd. Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, JanPath, New Delhi – 110001.
2. The Chief General Manager, Bharat Sanchar Nigam Ltd. Odisha Circle, BSNL Bhavan, Bhubaneswar-751002.

.....Review Respondents.

For the applicant : Mr. T. Rath, Advocate

For the respondents: Mr. L. Jena, Advocate

Heard & reserved on : 05.11.2020

Order on :26.11.2020

**O R D E R**

**Per Mr. Swarup Kumar Mishra, Member (J)**

In this Review Application, order dated 21.01.2019 passed by this Tribunal in O.A. No. 650 of 2016 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 allow the Original Application.
- ii) To quash the letter No. ST/161/502/2011/15 dated 14.07.2016 (As per annexure-A/14) issued by the Respondent No. 2 for being bad and not sustainable in law.
- iii) To direct the respondents to open the sealed cover and to grant two financial upgradations to the next higher IDA scales of pay to the applicant as per BSNL's Executive Promotion Policy w.e.f. 16.06.2007 and 16.06.2012 and consequently direct the Respondents to promote the applicant to the post of Sub-Divisional Engineer w.e.f.2.7.2013 i.e. the date from which his juniors are promoted to such posts with all consequential benefits after he has been acquitted in the criminal case and when there are no other legal impediments for granting him financial upgradation and promotion on all these dates.
- iv) To order and direct that the cost of litigation be paid to the applicant by the Respondent No. 2 for torturing the applicant and dragging him into unnecessary litigation.
- v) To issue any other order/orders, direction/directions as the Hon'ble Court deems fit and proper to meet the ends of justice.

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

- i) Under the circumstances, the applicant humbly prays that the Hon'ble Court may kindly be pleased to review the order dated 21.1.2019 passed in OA No. 650/2016 (Annexure-1) and restore the matter to file and dispose of the matter afresh by giving opportunity of being heard to both the parties;
- ii) And further be pleased to pass any other order/orders as deemed fit and proper.

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:

*“7. We have considered the rival submissions. In our considered view, the reliefs sought by the applicant in the instant O.A are fully dependent upon the ultimate result of OA No. 392/2016 and to this extent, the respondents are justified. In view of this, speaking order dated 14.07.2016 (A/14) is sustained.*

*8. In view of what has been discussed above, we are not inclined to interfere in this matter. Accordingly, the OA is held to be without any merit and the same is dismissed. No costs.”*

4. The applicant has averred in the Review application that the errors in this judgment which are apparent on the face of record are precisely as under:

- i) The applicant in this O.A. (O.A. No. 650 of 2016) had challenged the impugned order dated 14-7-2016 (Annexure A/14) and prayed for grant of his financial upgradations w.e.f. 16-6-2007 and 19-6-2012 and promotion to Sub Divisional Engineer w.e.f 2-7-2013 onwards after his honorable acquittal from the criminal case on 24-12-2014. The respondents knowing fully well that there were no legal impediments against the applicant for opening of the sealed cover and grant of financial upgradations/promotion during the period from 16-6-2007 to 5-2-2016, refused to grant such financial upgradations and promotions to the applicant and initiated a disciplinary proceeding against him on 06-2-2016.
- ii) That the applicant had enclosed the following orders of Govt. of India in support of his claim which clearly prescribed that after an official was acquitted from a criminal case the sealed cover was to be opened and the official whose promotion was denied for pendency of

criminal case will be promoted as per his position in the sealed cover. It was also very clearly prescribed there in that the second/subsequent proceeding will not stand on the way of opening of the sealed cover in granting promotion to such official from the date when there was no criminal or departmental proceeding pending against him.

- a. Annexure A/15:- Paragraph – 3 of G.I. Order dated 14-9-1992.
- b. Annexure A/16- (Rejoinder): Para 10 and 12 of G.I order dated 2-1-2012
- c. Annexure A/18 – Rejoinder; Para-3 of G.I. order dated 23-11-2014

That during the course of hearing of the case kind attention of Hon'ble Court was drawn to all these orders on behalf of the applicant.

iii) That the Govt. of India order dated 14-9-1992 (Annexure A/15) was issued as a result of review conducted based on the judgment of Hon'ble Supreme Court of India dated 27-8-1991 in case of Union of India Vs. K. V. Jankiraman which has been very clearly mentioned in para-1 of the order dated 14-9-1992. Therefore the instructions of Govt. of India in O.N. dated 14-9-1992 was as per the law well settled by Hon'ble Apex Court.

iv) That during course of the hearing the following decisions of Hon'ble Apex Court were cited on behalf of the applicant:-

- a) R.P. Singh Case (Civil Appeal No. 2605 of 2013 decided on 19-3-2013) which was exactly that of the case of the applicant. A copy of the judgment was also enclosed to the written note submitted by the applicant during course of hearing.

Hon'ble Court have ignored all these above mentioned documents/records/Apex court decisions mentioned in

the pleadings submitted on behalf of the applicant and also ignored the fact that the Respondents having no authority of Law have denied the financial upgradations & promotion of the applicant which is a clear case of colorful and malafide exercise of powers opposed to law. That Hon'ble Court have also ignored the fact that the Respondents were under obligation to act fairly as per the orders/Law without any ill will or malice in law. Hon'ble Court have also ignored the fact that the Respondents in the instant case have acted wrongfully and willfully without reasonable and probable cause.

- v) It is respectfully submitted that there was no relevancy for the Hon'ble Court to link the adjudication of this case with that of O.A No. 392 of 2016 which was a case in which the applicant has challenged the initiation of the departmental proceeding on 6-2-2016 based on the same charge and same evidence after the applicant was acquitted in the criminal proceeding more than one year back. If the OA of the applicant fails, then the departmental proceedings initiated against the applicant on 6-2-2016 will be proceeded as per law and the applicant, if found guilty, will be punished as per Rule. But that OA relates to challenging of second charge memo which has nothing to prevent the promotion and financial upgradations of the applicant from a date when there was no legal impediments against the applicant as per law.
- vi) That Hon'ble Tribunal have ignored the averments made by the applicant in the OA as well as in the rejoinder in this regard.
- vii) The Hon'ble Tribunal had ignored the material fact that there was no legal impediments from 16-6-2007 to 2-7-2013 after his acquittal in the criminal proceeding on 24-12-2014 for which the applicants prayer for financial upgradations and promotions should have been allowed.

viii) That section 22(3) (f) of the Administrative Tribunal Act, 1985 read with Rule – 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 as well as under Order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. Paragraph-3 of Govt. of India orders dated 14-9-1992 (Annexure A/15), clearly provides that on conclusion of the criminal proceeding which results in dropping of allegations against the government servant, the sealed cover/covers shall be opened. In case the Government servant is completely exonerated the due date of promotion will be determined with reference to the position assigned to him in the findings kept in sealed cover and with reference to the promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person.

5. The applicant further averred in the RA that Paragraph-10 of Govt. of India orders dated 2-11-2012 (as per Annexure A/17) prescribes “in case whereby the time the Departmental proceedings are concluded and the officer is fully exonerated but another charge sheet has been issued, the second charge sheet will not come in the way of opening of the sealed cover and granting promotion notionally from the date of promotion of his junior” and para-7 of the OM dated 14-9-1992 will not apply as clarified in OM dated 24-2-2003. But the Hon’ble Tribunal had completely ignored both these ruling positions as well as judgment/decision of Hon’ble Supreme Court in RP Singh case enclosed to the written note. The applicant further submitted that the Hon’ble Tribunal dismissed the OA on the ground of pendency of the disciplinary proceeding initiated on 06.03.2016 after applicant’s acquittal from the criminal proceeding on 24-12-2014 (which has been challenged by the applicant before this

Hon'ble bench vide OA No. 392 of 2016) when the second OA has nothing to do for deciding the issue in hands.

6. Learned counsel for the respondents relied on some citations including the following citations:

- a) Hon'ble Supreme Court in the case of State of West Bengal & Others Vs. Kamal Sengupta & another (2008) 8 SCC-612.
- b) Hon'ble Supreme Court in the case of Rajendra Kumar & others Vs. Rambhai & Others (2007) 15 SCC 513.
- c) Hon'ble Supreme Court in the case of Northern India Caterers (India) Ltd. Vs Lt. Governor of Delhi AIR 1980 SC 674.
- d) Hon'ble Supreme Court in the case of Devraju Pillai Vs. Sellayya Pillai, AIR 1987 SC 1160.
- e) Hon'ble Supreme Court in Delhi Administration vs. Gurdip Singh Uban & Ors., AIR 2000 SC 3737
- f) Hon'ble Supreme Court in Jain Studios Ltd. Through its President vs. Shin Satellite Public Co. Ltd. AIR 2006 SC 2686

7. Learned counsel for the applicant relied on some citations including the following citations:

- a) Hon'ble Supreme Court in the case of Northern India Caterers (India) Ltd. Vs Lt. Governor of Delhi AIR 1980 SC 674.
- b) Hon'ble Apex Court in case of Shaukat Hussain Guru vs State (NCT) Delhi and another AIR 2008 SC 2419

8. 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.

9. It was submitted by learned counsel for the applicant and specific grounds has been taken in the review application that due to non-consideration of documents vide Annexure A/15, A/17 & A/18 by this Tribunal while final disposing of the OA No. 650/2016 the final result of the OA has been affected and the result has gone against the applicant. This Tribunal has gone through the said Annexures A/15 the circular of the DOPT dated 14<sup>th</sup> September 1992 regarding the subject “promotion of the govt servants against whom disciplinary proceedings are pending or whose conduct is under investigation – procedure and guidelines to be followed”, Annexure A/17 is another circular dated 02.11.2012 regarding the subject “comprehensive review of instructions pertaining to vigilance clearance for promotion – regarding”, Annexure A/18 is another circulated 23.01.2014 issued by the DOPT regarding subject “comprehensive review of instruction pertaining to vigilance clearance for promotion – clarification-regarding.” Annexure A/15 gives instruction regarding the situation in which ad-hoc promotion should be given to concerned persons. Annexure A/17 is regarding opening of sealed cover and granting of promotion notionally from the date of promotion given to juniors.

10. In the present case the applicant was acquitted by the judge CBI court as per judgment dated 24.12.2014. Charge memo was issued against the applicant on 06.02.2016 regarding alleged misconduct/fraud committed by him during the period from June 2003 to February 2006. Taking into consideration the said background and circumstances the above mentioned three circulars are most relevant for the purpose of deciding as to whether any direction was required to be given by this Tribunal to the concerned authorities and whether this Tribunal should also have given direction with regard to the promotion of the applicant. Those three Annexures having quite relevant and bearing on the issue in question it was required by this Tribunal to consider

those circulars while disposing of the OA No. 650/2016. That having been not done this Tribunal is satisfied that in the RA that the said error which has crept in is apparent on the face of record and non consideration of said Annexures by this Tribunal in the OA, which is error apparent on the face of record is a sufficient ground to allow the RA in the interest of justice. In case the review application is not allowed due to the reasons as mentioned by us then there will be miscarriage of justice.

11. After going carefully through citations as relied upon by learned counsel for the respondents this Tribunal is of the opinion that the said decision are not applicable to facts and circumstances of the present case. Accordingly the review application deserves to be allowed and OA is restored afresh.

10. Hence the RA is allowed but in the circumstances without orders as to cost. The final order dated 21.01.2019 passed in OA No. 650/2016 is set aside and the OA be placed on 05.01.2021 for final hearing.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)