

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

Review Application No.24/2017

In

Original Application No.430/2013

Dated this the 05th day of July, 2021

CORAM :

HON'BLE SHRI JAYESH V. BHAIRAVIA, MEMBER (J)

HON'BLE SHRI DR. A. K. DUBEY, MEMBER (A)

Smt. Harshida Vijaykumar Mayavanshi,

Age:Adult,

Residing at 64, Ashutosh Society,

Karelibaugh,

Vadodara - 390 018

.....Applicant

(By Advocate Mr.P.H.Pathak)

Vs.

1. Union of India,
(Notice through the Bharat Sanchar Nigam Limited,
Through Chief General Manager,
Having his office at C.G.Road,
Ahmedabad.)

2. Sr. Communication Accounts Officer
O/o.CCA,
Gujarat Telecom Circle,Khanpur,
Ahmedabad.

3. Sr. Communication Accounts Officer
(Pension)
Gujarat Telecom Region,
Ahmedabad.

4. Accounts Officer (C.A.)
O/o PGMTD, B.S.N.L/
Karelibaugh,
Vadodara 390 018

5. Accounts Officer (Pay & Accounts),
O/o of PGMTD, B.S.N.L.
Vadodara.

.....Respondents

(By Advocate : Shri Joy Mathew)

ORDER (ORAL)

Per Dr A K Dubey, Member (A)

1. Aggrieved by the order of this Tribunal dated 06/04/2017 passed in OA 430/2013, the Review applicant had preferred this review application. Mr.Joy Mathew, counsel for the respondents, objected to the maintainability of this review, mainly on the ground that this Tribunal had heard the matter on 15/03/2017, arguments from both the sides were concluded on that day and thereafter judgement was pronounced on 06/04/2017. A copy of the order was ready on 12/04/2017. The present applicant was served with a certified copy on 23/04/2017. As per rules, the review application ought to have been filed within 30 days i.e., on or before 19/05/2017. The present review was filed on 27/06/2017 without any application for Condonation of Delay. The summer vacations were over on 04/06/2017 and the Court resumed work on 05/06/2017. Even after reopening, the MA for condonation of delay was filed only on 27/06/2017. Notice in the review application was issued only on 29/10/2017 by this Tribunal, wherein there was no reference to any MA for Condonation of Delay. Therefore he submitted that the review was not maintainable in absence of Condonation of Delay. On the other hand, counsel for the applicant Mr. Pathak submits that the applicant has filed an application for condonation of delay being MA No.159/2018 in which detailed reasons and grounds for delay caused in filing the RA were given. Counsel for the applicant submits that unnecessary observations had been made in the order under review; it was more particularly, with respect to the arguing counsel for the applicant. He further stated that his submission

while dealing with the claim of applicant was not considered at all by this Tribunal in the order under review.

- 2 Heard the parties. It is noticed that the application filed for Condonation of Delay was registered on 15/03/2018. Thereafter this Tribunal had issued notice in RA. Considering the reason and ground stated in the MA for Condonation of Delay in filing the present RA, same is allowed. So far as the grievance stated in the RA is concerned, we take note of the submission of the counsel for the respondent Mr. Joy Mathew that this Tribunal had actually dealt with the submission regarding observance of principles of natural justice by the Department as is clear from the Tribunal's order. In this regard, we refer to the observations made by this Tribunal in para no. 23 which is as under:-

*"It is already pointed out that this Tribunal by the order dated 11.04.1997 in the said OA.623/1996 made it clear that the department shall take further action in accordance with law in respect of those officials belonging to the reserved categories who had been promoted and who in terms of this judgment would not be eligible for such promotion. The fact that the above direction came to be confirmed by the Hon'ble High Court of Gujarat in the said S.C.A. No.7576/1997 cannot be disputed. Thus, it is clear that the direction of this Tribunal came to be merged with the judgment of the Hon'ble High Court in the said SCA No.7576/1997. The orders of this Tribunal as well as the directions of the Hon'ble High Court in the said S.C.A. was referred and affirmed by the Hon'ble Supreme Court in **R.Santhakumari Velusamy (supra)** also cannot be disputed. Therefore, if we were to deal with this question, the same would result in acting as an Appellate Authority as held by the Hon'ble High Court of Gujarat by its judgment dated 20.06.2016 in the case of **Suresh Kumar Vs. Union of India & Others [SCA No.2393/2016]** The relevant portion of the said judgment dated 20.06.2016 is reproduced herein below:*

Once the decision of the learned tribunal was confirmed by the High Court and the petition against the judgment and order passed by the learned tribunal came to be dismissed, thereafter the learned tribunal has no jurisdiction whatsoever with respect to the issue."

2.1. Further, so far grievances raised by the counsel for the applicant about observations made in paras 18 and 19 are concerned, these are expressions in course of discussions. Findings of this Tribunal entirely and only follow the records and documents in the light of extant instructions. Being a matter in course of discussion which did not seem to have any bearing on the decision of the tribunal, we do not deem it fit at this distance of time to revisit this para.

- 3 The review is mainly sought on the ground that the applicant in his OA had relied on the judgment of Hon'ble Supreme Court in *Bharat Sanchar Nigam Limited v. R. Santhakumari Velusamy & Others* [2011 (3) AI SLI 353], but these were lost sight in the order in OA No.430/2013. Counsel for the respondents submitted that CoD was not maintainable at this distance of time and in absence of CoD, OA itself was not maintainable. Even the Hon'ble Apex Court did not go into the issue of refusal of condonation of delay by the Tribunal as held in 17.03.1997 by it in *Hukum Raja Khinvasara v. Union of India & Ors.*
- 4 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) 3 AISLJ 209 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:

- “(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.”*

5. 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 asunder:

“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.”

- 6 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 hear the review application to act as an Appellate Authority in respect of the original order by a fresh hearing of the matter to facilitate a change of opinion on merits. We have examined the grounds urged by the review applicant in support of his prayer for reviewing the order and we find that the review applicant has failed to bring out any apparent error on the face of order under review.
- 7 As far as the contention in the review application about losing sight of the judgments quoted is concerned, the review petitioner's para 3 again places reliance on the judgment of Hon'ble Supreme Court in Bharat Sanchar Nigam Limited v. R. Santhakumari Velusamy & Others [2011 (3) AI SLI 353] contending that these were lost sight in the order in OA No.430/2013. Counsel for the respondents submitted that CoD was not maintainable at this distance of time and in absence of CoD, OA itself was not maintainable. Even the Hon'ble Apex Court did not go into the issue of refusal of condonation of delay by the Tribunal as held in 17.03.1997 by it in Hukum Raja Khinvasara v. Union of India & Ors. In this factual matrix, a plain reading of para 19 of the order of this Tribunal passed in the OA No.430/2013 makes it clear that the judgment relied by the applicant was not lost sight of. It is seen that in paras 18 and 19 of the order in OA No.430/2013, this Tribunal had considered the main grievance voiced in the OA and it was found to be lacking in merit for the reasons explained therein. In our considered view, the grounds and reasons on which this review application has been moved, are not tenable to warrant a review of the decision in OA No.430/2013.

8. Thus, in view of the above discussion and in light of the law laid down by Hon'ble Apex Court (Supra), the applicant has failed to point out any error much less an error apparent on the face of the 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.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)

KK/SKV