

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

RA No.50/2015 in OA No.131/2015

This the 01st day of March, 2021

**COROM : Hon'ble Shri Jayesh V. Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

1. Shri Ramjibhai M. Parmar,
Son of Shri M. Parmar,
Age about 60 years,
17, Gayatri Park Society,
Near Abhilasha Char-Rasta, New Sama Road,
Vadodara : 390 024
2. Shri Mahesh J. Yadav,
Son of Shri Jagrupsingh Yadav,
Age about 62 years,
C-84, Santoshinagar, Near Mehsana Nagar,
Nizampura, Vadodara : 390 024.
3. Shri Ravjibhai J. Waghela,
Son of Shri Jethabhai Waghela,
Age about 64 years,
3-B Pushpak Park, Bh.Prabhu Park,
Old Chhani Road, Vadodara : 390 002
4. Shri Narendra S. Mathur,
Son of Shri Shankar Mathur,
Age about 62 years,
C-503, Kanha Heights, Near MM Vohra Show Room,
Dabhoi Road, Vadodara : 390 025..... Applicants.

(By Advocate Ms. V.A.Purani)

V/s.

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi : 110 001
2. The General Manager,
W. Rly Churchgate, Mumbai : 400 020

3. Divisional Railway Manager, W. Rly.,
Pratapnagar, Vadodara : 390 004.....Respondents.

(By Advocate : Ms. Roopal R. Patel)

ORDER – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

In the present Review Application, the applicant has sought
for the following reliefs :

*“(A) The Hon'ble Tribunal be pleased to recall/ review
the order passed in OA No.131/2015 dated 07th October, 2015
which is at Annexure A-1 (Colly.) to this application.*

*(B) Pending admission and final disposal of this
application be pleased to suspend further implementation and
operation of the order in OA No.131/2015 dated 07th October,
2015, which is at Annexure A-1 (Colly.) to this application.*

*(C) Any other and further relief as this Hon'ble Tribunal
may deem fit and proper in the interest of justice be granted.”*

2. The present RA has been filed by the applicant mainly on
the ground that Advocate of the applicants was not granted
sufficient time to file rejoinder and this Tribunal passed final
order in OA No.131/2015 without affording an opportunity of
being heard to their Advocate. It is further submitted that though
the certain submissions not contended by the respondents,
however, the same has been incorporated in the order passed in
the OA. This Tribunal has disposed of the OA of the applicants
by referring to the order passed in OA Nos. 113 & 114 of 2012,

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but copy of the said referred order was not supplied to the advocate to enable him to go through it and advanced his contentions. It is also contended that aggrieved by the order dated 07.10.2015 passed by this Tribunal in OA No. 131/2015, the applicant had filed SCA No. 16483/2015 before the Hon'ble High Court of Gujarat. The said SCA came to be disposed of as withdrawn by granting liberty to file Review vide order dated 26.10.2015, Hence, this RA. In sum, it is the grievances of the applicants that while dismissing the main OA, this Tribunal had not afforded due opportunity to their counsel to put forth the submission on their behalf. Therefore, it is prayed for recalling of the Order dated 07.10.2015 passed by this Tribunal in OA No. 131/2015.

3. On the otherhand, the respondents have filed their reply and opposed the contentions of the applicants. It is stated that the applicants have filed the aforementioned OA before this Tribunal raising the grievance as to non extension of financial upgradation to them under the MACP of 2008. The said claim of the applicant was rejected for the reason that they were granted 3 / 4 promotions during their tenure. It is submitted that it is not correct on the part of the applicant to state that no sufficient or opportunity was granted to them. In fact, in para 11 of the order dated 07.10.2015, this Tribunal had observed in great detail

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about grant of opportunity to the parties and their submissions. As such, sufficient time was granted to the applicant to file rejoinder. It is further stated that after hearing the counsel for the parties and by relying on the decision rendered in OA Nos.113 & 114 of 2012, wherein judgment passed by Hon'ble Apex Court in the case of *Bharat Sanchar Nigam Limited v/s. R. Santhakumar Velusamy & Ors* reported in **2011 (3) SLJ 353**, this Tribunal came to the conclusion that since the applicants have participated in the Limited Departmental Competitive Examination and therefore, it cannot be said that they were directly recruited employee, but as such they were promoted employee. Since the applicants have availed the benefits of promotions during their service carrier, would not be entitled for benefits under the MACP Scheme. Learned standing counsel for the respondents submits that it is well settled principles that under the review, the matter cannot be heard on merit as like Appellate Authority. There is no error apparent on the face of the record. If the applicants believe that the order passed by this Tribunal is not correct or wrong for which review is not the remedy. This Tribunal has recorded cogent reasons for the conclusion raised while dismissing the OA of the applicants. As such the grounds and reasons stated in the RA cannot be the

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ground for recall of the order. As such, there is no apparent error in the order passed by this Tribunal.

4. Heard counsel for the applicant, Ms.V.A.Purani and counsel for the respondents, Ms. R.R.Patel at length and perused the material on record.

5. It is noticed that this Tribunal in para 11 of its order dated 07.10.2015 observed as under :

“11. When the matter was taken up for hearing, Shri P.H. Pathak, learned counsel for the applicants, submits that he has not filed rejoinder to the reply of the respondents and sought some time to file rejoinder. On perusal of previous order sheets of the proceedings, we find that the learned counsel for the applicant was in receipt of a copy of the reply on 02.07.2015 itself. Subsequent to 02.07.2015, the matter came up for hearing on 16.07.2015 and on that day, at the request of the learned counsel for the applicants, the matter was adjourned to 30.07.2015. On 30.07.2015, again at the request of the learned counsel for the applicants, the case was adjourned to 12.08.2015. On 12.08.2015, the matter was delisted and was called on 22.08.2015. On 22.08.2015, when the matter was called for rejoinder of the applicant, none appeared on behalf of the applicants. However, with a view to give an opportunity to the applicants for filing rejoinder, the matter was adjourned to 10.09.2015. On 10.09.2015 also, Shri P.H.Pathak, was not ready with the rejoinder, but sought adjournment for filing rejoinder and at his request the case was posted to 07.10.2015. Thus, at the request of the learned counsel for the applicants, the matter has been adjourned for rejoinder of the applicants several times. In fact, the applicants were granted time of over 3 months to file rejoinder from the date on which a copy of the reply was served on them. Shri P.H. Pathak could not assign any valid reason for seeking adjournment to file rejoinder when the case came up for hearing on 10.9.2015. Rule 14 of the CAT (Procedure) Rules deals with calendar of cases. Sub-Rule 2 of Rule 14 is as under:

14. Calendar of cases (1).....

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(2) Every application shall be heard and decided as far as possible within six months from the date of its registration.”

The O.A. was registered on 24.03.2015. Besides, on perusal of the pleadings and upon hearing Ms. Roopal R. Patel, learned counsel for the respondents, we find that we have already decided the identical issue involved in this O.A. in several other OAs. They are (i) Common order dated 30.07.2015 in O.A.No.413/2015, 414/2015, 415/2015, 416/2015 and 417/2015, (ii) order dated 31.07.2015 in O.A.No.29/2014, (iii) order dated 31.07.2015 in O.A.No.30/2014, (iv) order dated 31.07.2015 in O.A.No.31/2014, (v) order dated 31.07.2015 in O.A.No.507/2014, (vi) order dated 31.07.2015 in O.A.No.226/2015, (vii) common order dated 31.07.2015 in O.A.No.224 & 227/2015, (viii) common order dated 31.07.2015 in O.A.No.220 to 223/2015, (ix) order dated 31.07.2015 in O.A.No.28/2014 (x) order dated 31.07.2015 in O.A.No.28/2014 and (xi) common order dated 30.9.2015 in O.A.No.113 and 114/2015. In view of our decision in all the above cases, in our opinion, even if the matter was to be adjourned for filing rejoinder, the same would in no way affect our decision on the issue. Hence, we have declined to adjourn the matter and taken up the matter for final disposal.”

6. Having taking into consideration aforesaid observation, it cannot be said that the applicants were not granted sufficient time by this Tribunal to file rejoinder. Therefore, we do not find any reason to adjudicate this RA on the said ground.

7. 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

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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. 6 (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.”

8. 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 as under:

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“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.”

9. 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 here in the review application to act as an Appellate Authority in respect of the original order by a fresh re-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. So far as grievance of the applicant that this Tribunal has not considered the contention of the applicant as made in the OA and not considered the judgments relied upon by the applicants, in our considered view, the said grounds is not tenable.

10. Thus, in view of above discussion and in light of the law laid down by Hon’ble Apex Court (*supra*), the applicant has

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failed to point out any error much less an error apparent on the face of 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)
Member (A)

(J.V.Bhairavia)
Member (J)

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