

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Review Application No.17/2017

in

OA No.427/2012

Dated this the 05th day of July, 2021

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Sh. Dr. A.K. Dubey, Member (A)

1. Mr. Bharatkumar Dahyalal Patel
Son of Dahyalal Patel
Age: above 47 years,
Residing at: Block no. 29/403,
Utsav Apartment, Opp Bhavsar Hostel,
Navavadaj, Ahmedabad – 380 013.
2. Mr. Dilipkumar Mohanlal Solanki
Son of Mohanlal Solanki
Age: above 58 years,
Residing at: A/107, Borsali Apartment,
Khanpur, Ahmedabad – 380 001.
3. Mr. Girishkumar Jayantilal Shah
Son of Jayantilal Shah,
Age: above 48 years,
Residing at: C-403, Sahjanad Residency,
Opp. Halmet Circle, Memnagar Road,
Ahmedabad – 380 052.
4. Mr. Atulkumar J. Trivedi
Son of Jagdishchandra Trivedi
Age: above 54 years,
Residing at: 6, Chaudhari Flat, Paladi Gam,
Ahmedabad: 380 007
5. Smt. Reema Girishkumar Shah
Wife of Girishkumar Shah
Age: above 53 years,
Residing at: C-403, Sahjanad Residency,
Opp: Halmet Circle, Memnagar Road,
Ahmedabad – 380 052.

6. Mr. Bharatkumar Vrajlal Patel
Son of Vrajlal Patel
Age: abpve 47 years,
Residing at: A/4, Sidhi Vinayak flat,
Patidar Society, Junavadav, Ahmedabad – 380 013.
7. Mr. Rajesh Pitambardas Acharay,
Son of Pitambardas Acharay,
Age: above 49 years,
Residing at: 6, Narsinh park society,
Nr. Ankur, Naranpura, Ahmedabad – 380 013.
8. Smt. Ruthamma Setunadhavan
Age: above 44 years,
Residing at: H/304, Sarvodaya-II,
Nr. Pavapuri Circle, Post- Ghatlodiya,
Ahmedabad – 380 061.
9. Mr. Shailedra Mahendra Sharama
Son of Mahendra Sharma
Age: above 49 years,
Residing at: A/27, Upasna Society Ghodasar khas,
Ghodasar, Ahmedabad – 380 050.
10. Mr. Hementkumar Jasvantlal Shah
Son of Hasvantlal Shah
Age: above 53 years,
Residing at: B-303, vrajdeep Apartment,
Nr. L.G. Corner, Opp. Dipandra Flat,
Maninagar, Ahmedabad – 380 008.
11. Mr. Akshay Vaman Borikar
Son of Vaman Borikar
Age: above 44 years,
Residing at: A/16, Krishna Kunj Society,
Near Smutimandir, Ghodasar, Ahmedabad - 380 030.
12. Smt. Kashmira Jankbhai Shah
Wife of Janakbhai Shah
Age: above 44 years,
Residing at: 62, Kameshwer Park, Ghodasar kanas,
Ahmedabad – 380 030.
13. Mr. Nandkishor Somabhai Vanzara
Son of Somabhai Vanzara
Age: above 56 years,
Residing at: A/131, Girivrund Society,
Opp. Kubershavar Mahadev,
Shaijpur Boge, Ahmedabad – 382 345.
14. Mr. Dolatsing Sonsinh Makwana
Son of Sonsinh Makawan,

Age: above 62 years,
Residing at: Vadvasa, Tal Prantij, Dist. Sabarkantha.

15. Mr. Harsadbhai Kantilal Bhavsar,
Son of Kantilal Bhavsar,
Age: above 63 years,
Residing at: Upliseri dhalni pore,
Astodiya, Ahmedabad.
16. Mrs. Pravinaben Syamlal Desai
Wife of Syamlal Desai
Residing at: C-203 Anurag Residency,
Near Memnagar Petrol Pum,
Memnagar, Ahmedabad – 380 052.

...Applicants

(By Advocate: Mr. P H Pathak)

VS

1. Union of India
Notice to be served through
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi – 110 011.
2. The Additional Director (CGHS),
Nirman Bhavan, New Delhi – 110 011.
3. The Additional Director CGHS,
2nd Floor, S. R. House, Opp. Mount Carmel School,
Ashram Road, Ahmedabad – 380 009.

...Respondents

(By Advocate: Ms. R R Patel)

O R D E R (ORAL)

Per: Hon'ble Dr.A.K.Dubey Member (A)

1. The applicants have filed this Review Application seeking recall of the order in the OA No.427/2012 dated 27.07.2017 mainly on the following grounds:-
 - 1.1 The order impugned in OA 427/2012 was passed without observing the principles of natural justice. In course of hearing in that OA, it was submitted by the counsel for the applicants that in view of the Hon'ble Supreme Court order in the case of **Divisional**

Superintendent, Western Railway, Dinapore & Ors. v. K.S.Kashevi & Ors. and also in view of the DoP&T letter dated 10.06.2015 whereby the demands of the applicants were accepted, the matter should have been dealt with in that light. Applicants contend that the tribunal passed the order in that OA without hearing on merit.

- 1.2 The arguments were heard on 07.07.2017 and the decision was rendered on 27.07.2017 and in this long gap, the Tribunal had lost sight of everything including the two points mentioned above.
- 1.3 The Tribunal forgot that the matter was argued on the short ground of violation of principles of natural justice.
- 1.4 The applicants have also submitted that this Tribunal had passed the order in OA 427/2012 without referring to the actual arguments and quoting the contentions from the mouth of the counsel.
- 1.5 That the applicants' advocate had read out the operative portion of the order in **Rafique Masih's** case and had submitted that the applicants were all Class III employees' and no recovery could be made from them. But due to lapse of long time, the Tribunal passed the judgment without taking above quotes into account.
- 2 In their reply, the respondents denied the review applicants' contention and arguments in this review application. Respondents contended that the main issue in OA 427/2012 had been dealt with and incorporated in various paragraphs of the order of this Tribunal dated 27.07.2017 and therefore, there was no need to recall it or review the matter.
- 3 In course of hearing, the learned counsel for the review applicants reiterated the submission that the applicants were not heard by the Tribunal and the matter was reserved for orders; the issue discussed in the hearing was limited

to whether principles of natural justice were observed while issuing the impugned order or not. In course of this review hearing also, the learned counsel drew the attention of the Supreme Court order quoted above, **Divisional Superintendent, Western Railway, Dinapore & Ors. v. K.S.Kashevi & Ors.** His contention is that since the matter was not heard on merits, it should be recalled and heard yet again. The most important thing was that the applicant was not given any opportunity of being heard before recovery of the amount even as in view the judgment in **Rafique Masih case**, recovery should not have been made.

- 4 Learned Standing counsel for the respondents did not agree with the contention of the applicants' counsel and reiterated the points that the final order in OA No.427/2012 with OA 343/2012 dated 27.07.2017 had covered all the relevant points and thus it was in order.
- 5 Para 34 of the order indicates about the settlement of the retiral dues of the applicant vide order dated 09.12.2016 of the respondents. The learned Standing Counsel drew attention to para 17 of the order in OA 427/2012 with OA 343/2016 and argued that opportunity was given to all the affected employees; para 17 actually indicated the course of subsequent action too. She also drew this Tribunal's attention to the paras 26 and 27 of the order in which, the judgment of Hon'ble Delhi High Court's in Union of India & Ors. v. All India CGHS Employees Association & Ors. had been taken into account and W.P. (Civil) No.8515/2014 too had been referred to. Therefore, the order dated 27.07.2017 had dealt with all relevant points.
- 6 Heard the arguments of the counsel for both sides, and carefully perused the order of this Tribunal in OA 427/2012 with OA No.343/2016 impugned here. Apart from the arguments which have already come up in the foregoing paragraphs, we find that the main issue of adherence to the

principles of natural justice, which forms crux of the applicants' contention in this review application too, had actually been discussed in this order. The order in this OA had taken into account the arguments that were put forth by the applicants. With such a detailed order that had adjudicated over all relevant points, we do not find any error or inconsistency in it.

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 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.”*

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:

“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 HighCourt.”

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 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.
10. As far as the contention in the review application about losing sight of the judgments quoted is concerned, the review application’s para 3 again places reliance on the judgment in **Divisional Superintendent, Western Railway, Dinapore & Ors. v. K.S.Kashevi & Ors.** contending that these were lost sight in the order in OA No.427/2012. In this factual matrix, a plain reading of para 26 & 27 of the order of this Tribunal passed in the OA

No.427/2012 makes it clear that the judgment relied by the applicant was not lost sight of. It is seen that in para 26 and 27 of the order in OA No.427/2012, 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. After reading the impugned order in entirety, we are of our considered view that the grounds and reasons for which this review application has been moved are not tenable to warrant a review of the decision in OA No.427/2012 since relevant issues had all been considered there.

11. 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