

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

RA No.18/2017 in OA No.184/2014

This the 19th day of March, 2021

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

Shri Mafatlal Manilal Kadia
Son of Shri Manilal Kadia
DOB 02.02.1950, Age about 67 years
Assistant Director (Training)
Postal Training Centre,
Vadodara – 390 022 (Rtd.)
Residing at 17, Purusharthnagar,
Radhanpur Road, Mehsana – 384 002. Applicants

(By Advocate : Shri A.D.Vankar)

Versus

1. Union of India & Others
Notice to be served through
The Secretary,
Ministry of Communication and I.T.,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
2. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad - 380 001.
3. Director,
Postal Training Centre,
Vadodara – 390 022. Respondents

(By Advocate : Ms. R.R.Patel)

O R D E R – ORAL

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

The present RA has been filed with respect to the order
dated 26.07.2017 passed by this Tribunal in OA No.184/2014. It

is noticed that aggrieved by non grant of the benefits of 3rd financial upgradation under MACP, the applicant had filed the said OA, however, after considering the material on record, the same was dismissed vide order dated 26.7.2017.

2. In the RA, the applicant has raised the grievance that after reply to query by this Tribunal, the counsel for the applicant in fact further submitted that the respondents have not supplied a copy of ACRs/APARs, the said submission was not accepted by the Tribunal. The said submission has not been observed in the order in RA. This Tribunal has only stated that “to our specify query to Shri A.D.Vankar, “whether the applicant has submitted any representation seeking upgradation of his grading for the year 2004-2005 and 2005-2006?” he replied as ‘No.’ Therefore, not recording or observing the complete submission of the counsel for the applicant, the order passed by this Tribunal is required to be recalled.

3. 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.”

4. 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 High Court.”

5. 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 is consent, it is appropriate to reproduce to observation of para Nos.16, 17, 18, 19 & 20 which reads as under :

“16. The respondents at paragraph 9 of the reply have pointed out the gradings of the applicant for the last five years prior to the date of the meeting of the Screening Committee. It reads as under:-

2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Very Good	Good/ Average	Average	Good	Good

The above particulars/gradings of the applicant demonstrate that he does not have the required bench mark in respect of the years 2004-2005 and 2005- 2006. Though the applicant has filed his rejoinder, there is no specific denial to the above facts stated at paragraph 9 of the reply.

17. In view of the specific contention of Shri A D Vankar that the Screening Committee did not recommend the case of the applicant on account of the fact that he was served with a charge memorandum dated 20.01.2010, it has become necessary for us to ascertain the same and in that direction Ms Prachi Upadhyay drew our attention to para 14 of the reply. The relevant portion of the same reads as under:-

“.....It is submitted that charge sheet was not the basis for rejecting the claim of applicant for grant of third MACP as contended by applicant. The committee has not considered any adverse took place after 01.09.2008. Therefore the argument of the applicant has no relevancy at all.”

There is no specific denial to the above categorical submission of the respondents.

18. At the end Shri A D Vankar argued that had the respondents communicated the ACR/APAR of 2004-2005 and 2005-2006 to the applicant, he would have got a chance to make a representation to the competent authority seeking upgradation of the same but due to the fact that the same was not communicated, the Screening Committee cannot rely upon uncommunicated gradings.. We are not in agreement with this submission. It is needless to mention that prior to the reporting period 2008-2009 only the adverse remarks in the ACR has to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The new system of communicating the entire ACR is made applicable w.e.f. reporting period 2008-2009 pursuant to the judgment of Hon'ble Supreme Court in the case of Dev Dutt versus Union of India & Ors. [2008 (8) SCC 725]. In other words, till the reporting period 2007-2008, the system of communicating the entire ACR was not the Rule or law. Therefore the applicant is not entitled to find fault with the non recommendation on the ground that the entire ACR was not made available to him so as to enable him to make representation.

19. *To our specific query to Shri A D Vankar, “whether the applicant has submitted any representation seeking upgradation of his grading for the years 2004-2005 and 2005-2006?” he replied as “No.” The applicant having kept quiet without making any effort to get his gradings for the year 2004-2005 and 2005-2006 upgraded is not at all entitled to claim that he is entitled for third financial upgradation.*

20. *For the foregoing, we do not find any valid ground to interfere with the impugned orders at Annexures A/1 and A/2 which is based on the Minutes of the Screening Committee dated 20.09.2010 vide Annexure A/4 and consequently the question of giving any direction as prayed does not arise at all.*

6. Thus, in view of 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 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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