

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

**RA No.30/2016 in OA No.219/2015
with MA No.161/2016**

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 B.C.Dutt,
Son of Shri Chhotabhai Punjabhai Dutt,
Public Relation Inspector (Posts),
Rajpur Gomtipur P.O. (Rtd.), Ahmedabad - 380 021
Residing at D-558, Dipalinagar Society,
Adinathnagar,
P.O. Odhav I.E.,
Ahmedabad - 382 415..... Applicant

(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. Sr.Suptd. of Post-offices,
Ahmedabad City Division,
Ahmedabad - 380 009.
 4. Director of Accounts (Postal),
Ahmedabad G.P.O.Building,
Ahmedabad - 380 001..... 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 17.11.2015 passed by this Tribunal in OA No.219/2015,

whereby the prayer of the applicant to quash and set aside the order of the withdrawal of BCR Placement dated 26.03.2010 and withdrawl of 3rd financial upgradation under MACP vide impugned order dated 07.05.2014 was not accepted by this Tribunal, at the same time, by considering the facts and circumstances, as also the judgment passed by the Hon'ble Apex Court in the case of **State of Punjab v/s. Rafiq Masih (White Washer)**, this Tribunal directed the respondents that no amount is recoverable from the applicant consequent upon the cancellation of the orders by which he was granted BCR Placement and 3rd financial upgradation under MACP. With the said observation, the OA was dismissed.

2. Considering the reasons stated in the MA No.161/2016 for condonation of delay, the same is allowed.

3. Further, it is noticed that aggrieved by the order passed by this Tribunal dated 17.11.2015, the present respondents (Original respondents) had filed SCA No.8333/2016 before the Hon'ble High Court of Gujarat and the same was dismissed vide judgment dated 04.07.2016 wherein in para 4.1, the Hon'ble High Court has held as under:

"Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that learned Tribunal has not committed any error in restraining the department from making any recovery

from the original applicant who had already retired on attaining the age of superannuation."

Thereafter, the applicant has filed the present RA wherein he has prayed to modify operative part of the order dated 17.11.2015 annexed at Annexure RA-1 (para 32) in terms of prayer sought in OA No. 219/2015 for direction to the respondents to restore BRC placement of the applicant from due date i.e. 01.01.2009 with all consequential benefits.

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. 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.”

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 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.”

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 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, in our considered view, the said submissions and grounds are not tenable in the light of grounds stated in the order passed by this Tribunal in OA No.219/2015. 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.

7. Thus, in view of above discussion and in light of the law laid down by Hon'ble Apex Court (*supra*), we do not inclined to accept the grounds stated by the applicant in the present RA since the same are lack of merits to entertain this RA. The RA is deserved to be dismissed and accordingly the same is dismissed.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

nk