

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI**

**REVIEW PETITION NO. 46/02
IN
ORIGINAL APPLICATION NO.86/99**

THIS THE 19 TH FEBRUARY, 2004

**CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)**

J.Y. Marne & 22 Ors. ... Applicants

By Advocate Shri S.P. Saxena

Vs.

Union of India & Ors. .. Respondents

By Advocate Shri R.K. Shetty.

**O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)**

This review petition has been filed by the respondents seeking dismissal of the order dated 25.6.2002 in OA No.86/99 on the following grounds.



That through inadvertence and/or accidental omission the respondents have failed to bring to the notice of this Tribunal the details of appointment and promotional / financial upgradation under the Assured Career Progression Scheme (ACPS for short) pursuant to the recommendation of the 5th Pay Commission in favour of the applicants.

b) Secondly failure to bring it to the notice of this Tribunal the contents of Exhibit RP-2 during the course of hearing on 25.6.2002 is an error apparent on the face of the record and this error came to the notice of respondents only after the receipt of Tribunal's order dated 25.6.2002.

2. We have gone through the pleadings and averments in review petition of the respondents as well as the reply filed by the applicants in OA and also heard learned counsel for the rival parties.

3. As to fresh point, this review petition taken out by the respondents to suggest that no promotional avenue can be prescribed, as ACPS /financial upgradation is already granted to some of the applicants. In our view it makes no difference as the financial upgradation is not a promotion involving the higher status and higher duties. The Tribunal has passed the impugned order dated 25.6.2002, after considering all aspects of the case as indicated in para 7 of the judgment. Learned counsel for the petitioners also argued that ACPS could not be brought on record by mistake and had it been placed on record, the judgment of the Tribunal would have been otherwise. This contention is not sustainable in law, because the ACPS was within the knowledge of respondents at the time of hearing of the case and they could have placed it on record, if so required.

4. The scope of review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order XXXVII Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence

was not within his knowledge or could not be brought by him at the time when the judgment was made, or on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in *Ajit Kumar Rath Vs. State of Orissa & Ors* 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing of arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

The Hon'ble Supreme Court in *Subash Vs. State of Maharashtra* 2002 SC 2537 has, observed in para 3 as under:

..... there is no justification for the Tribunal to have reviewed the matter once over again, particularly, when the scope of review is very much limited under Section 22 (3)(f) of the Administrative Tribunals Act, 1985 as is vested in a Civil Court under the Code of Civil Procedure. The Tribunal could have interfered in the matter if the error pointed out, is plain and apparent. But the Tribunal proceeded to

re-examine the matter as if it is an original application before it. This is not the scope of review."

4. In our view there is no error apparent on the face of the record and there is no discovery of the new facts within the meaning of Order XXXVII Rule 1 CPC.

The grounds stated in review petition do not come within the purview of Order XXXVII Rule 1 CPC. Therefore, we find that there is no merit in the review petition. In the result the review petition is dismissed with no order as to costs.



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Certified True Copy
Date 27.2.04

Section Officer
Central Admin. Tribunal
Mumbai Bench

CAT/MUM/JUDL/OA86/99/1587

Copy to :

Dated: 1-3-2007

1. Shri S.P. Saxena, counsel for the applicant.
- ✓ 2. Shri R.K. Shetty, counsel for the respondents.

[Signature]
9/3/07

SECTION OFFICER.

[Signature]
13/04
For R.R. Shetty

Despatch 53-07
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DESPATCH