

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,**  
**Circuit Sitting : Indore**

**Review Application No.11 of 2006**  
**(in O.A.No.276 of 2002)**

**Jabalpur, this Friday the 11<sup>th</sup> day of January, 2013**

**Hon'ble Mr. Justice Dhirendra Mishra, Judicial Member**  
**Hon'ble Mr.G.P.Singhal, Administrative Member**

1. Central Provident Fund Commissioner, Bhavishya  
Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi.

2. Regional Provident Fund Commissioner,  
Madhya Pradesh, 7, Race Course Road, Indore, M.P.

3. Regional Provident Fund Commissioner, Maharashtra  
& Goa, 341, Bhavishya Nidhi Bhawan, Bandra (East)  
Mumbai

**- Applicants**

(By Advocate – Shri Prateek Maheswari)

**V e r s u s**

Sushri Tanjua Malkani, D/o late Shri Hashmat Rai,  
Malkani, Lower Division Clerk, O/o Regional Provident  
Fund Commissioner, 7, Race Course Road,  
Indore, M.P.

**-Respondent**

(By Advocate – Shri Rahul Sethi)

**ORDER**

**By Dhirendra Mishra, JM.-**

This Review Application has been filed by the respondents (in Original Application No.276/2002) for reviewing order dated 21.7.2004 (Annexure P-19) passed in aforesaid Original Application whereby Application of the original applicant was allowed and the respondents were directed to adjust the applicant in the scale of Upper Division Clerk (for brevity 'UDC') on her transfer from the office of Regional Provident Fund Commissioner (for brevity 'RPFC'), Mumbai to RPFC, Indore w.e.f. 02.03.1998 with the seniority she had before her transfer from Indore to Mumbai and protect her pay in the



scale of UDC, which she was entitled to draw before her transfer from Mumbai to Indore.

2. In this order, the parties shall be referred, as described in the Original Application No.276/2002.

3. Brief history of the case is that the respondents' Writ Petition No.949 of 2005, against the order under review was disposed of, vide order dated 09.08.2005 (Annexure P-20), with the consent of the parties, with liberty to the respondents to file review petition before the Tribunal. Accordingly, the instant Review Application was filed by the respondents along with an application for condonation of delay in filing the Review Application and the same was allowed by the Tribunal vide order dated 30<sup>th</sup> of April, 2008 and the exparte order dated 21.07.2004 under review was set aside. The applicant challenged the aforesaid order by way of filing Writ Petition (S) No.4669/2008 and the Writ Petition was disposed of in terms of directions contained in the order dated 28.2.2012 and the matter has been remitted back for a fresh decision of review petition.

4. Learned counsel for the respondents vehemently argued that applicant's request for voluntary transfer to Maharashtra Region vide order dated 15.01.1997 (Annexure P-5) was accepted with the conditions that she will be accommodated as the junior most Lower Division Clerk (for brevity 'LDC') in Maharashtra region, however, pay drawn by her at Regional Office Indore will be protected in the post of LDC. In compliance of the order of transfer, the applicant was relieved vide order dated 13.2.1997 (Annexure P-6), however, in the said order there was a typographical error, in condition no.1, wherein it was stated that her pay in the cadre of UDC will be protected, whereas according to the transfer order the pay of the applicant was ordered to be protected in the post of LDC. The applicant joined at her transferred place at Mumbai and she was accommodated as junior most LDC and her pay was protected vide order dated 7.3.1997 (Annexure P-7). Thereafter, the applicant again sought voluntary transfer from Mumbai to Regional Office, Indore and the same was

accepted on the same terms and condition vide order dated 27.2.1998 (Annexure P-10) and she was accommodated as the junior most LDC in the Regional Office, Indore and her past services were to be counted only for the purposes of departmental examination and the same shall not be counted for promotion. Thereafter, the applicant preferred an appeal on 22.07.1998 (Annexure P-13) for pay protection in the cadre of UDC, however, her request was rejected vide order dated 24.12.1998 (Annexure P-14). The RPFC Indore, vide order dated 21.12.2001 (Annexure P-15) corrected the typographical order crept in the relieving order dated 13.02.1997 (Annexure -P-7) to the effect that she would be accommodated as junior most LDC from the date of joining and her pay would be the same as payable to the post of LDC. Against this order the applicant filed OA No.276/2002, which has been allowed by the Tribunal vide order dated 21.07.2004 (Annexure P-19) under review. The learned counsel for the respondents has stated that the aforesaid order is erroneous in law as well as on facts and that the Tribunal has not considered the question of limitation raised by the respondents in their reply and there is no finding on the said issue and the order is based on misinterpretation of the relieving order containing a typographical error, which has been subsequently rectified vide order of P-15. However, the above facts have not been considered in the order under review and thus there is error apparent on the face of record and the same warrants review. The applicant accepted the terms and conditions of transfer order and joined as junior most LDC at Mumbai in the year 1997 and she was again transferred to Indore after a year in the year 1998 and the applicant again accepted the condition of transfer and she was accommodated at the bottom of the LDC cadre and her pay was protected in the maximum of the pay scale of the LDC cadre. She, for the first time, requested for protection on 15.4.1999 and the same was rejected vide letter dated 21.4.1999 as per provisions of FR 22(1)(9)(3) and these facts have not been considered in the order under review. The learned counsel has placed reliance on the



decisions of the Hon'ble Supreme Court in the matters of **K.P.Sudhakaran and another Vs. State of Kerala and others**, (2006) 5 SCC 386, **Scientific Advisor to Raksha Mantri & another Vs. V.M.Joseph**, (1998) 5 SCC 305, **Union of India and others Vs. Deo Narain and others** (2008)10 SCC 84, for the analogy that when a government servant is transferred on his own request, he will have to forego his seniority and his seniority has to be counted from date of joining new district.

5. Learned counsel for the applicant on the other hand submits that the respondents have sought to challenge the order under review on merits, which is not permissible under law as the scope of review is 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 order and rehearing of the matter, to facilitate the change of opinion on merits. The Tribunal can review its decision under Section 22(3)(f) of the Administrative Tribunals Act, 1985 which is akin/ analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code. An error which is not self evident and which can be discovered by a long processes of reasoning can not be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f) *ibid*. Reliance is placed on judgment of the Hon'ble Supreme Court in the matters of **Ajit Kumar Rath Vs. State of Orissa and others**, (1999) 9 SCC 596 and **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008)2 SCC (L&S) 735.

6. Heard learned counsel for the parties.

7. Respondents' Writ Petition No.949/2005 against the order under review was disposed of vide order dated 09.08.2005 (Annexure P-20) and the respondents were permitted to withdraw the petition with liberty to file review application before the Tribunal against the order under review. The Tribunal after hearing the counsel of respective parties allowed the review application vide order dated 30.4.2008 and set aside the *exparte* order dated 21.7.2004 on the

ground available under Rule 16(2) of the Central Administrative Tribunal (Procedure) Rules, 1987. However, the applicant's Writ Petition No.4669/2008 was allowed vide order dated 28.2.2012 and the matter has been remitted back to this Tribunal for fresh decision of review application on merits.

8. From close scrutiny of the review application and arguments advanced by the learned counsel for the applicant, it is apparent that the respondents are seeking review of the order passed by this Tribunal by challenging the order on merits and no permissible ground available for reviewing the order has been canvassed during the course of the argument.

9. It is settled law that an error apparent on the face of record can alone be corrected while exercising review jurisdiction and where an error is far from self evident and can be established by lengthy and complicated argument, the same can not be cured in review proceedings. The scope of review under the provisions of Order 47 Rule 1 of the Civil Procedure Code, which provision is analogous to Section 22 (3) (f) of Administrative Tribunals Act, 1985 is very limited as held by the Hon'ble Supreme Court in various judgments.

10. In the matters of **Ajit Kumar Rath** (supra) the Hon'ble Supreme Court has held that: "a review cannot be claimed or asked for merely for a fresh hearing or 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". This Tribunal can not review its order unless the error is plain and apparent. It has clearly been further held by the apex court in the said case that: "[A]ny 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".

11. Hon'ble Supreme Court in the matters of **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhury (Smt.)**, 1995 (1) SCC 170

referring to certain earlier judgments, observed that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error can not be cured in a review proceeding.

**11.** In the matters of **Union of India Vs. Tarit Ranjan Das**, 2004 SCC (L&S) 160 the Hon'ble Supreme Court has held as under:

“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 order and *rehearing of the matter to facilitate a change of opinion on merits*. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application”.

**12.** Hon'ble Supreme Court in the matters of **Kamal Sengupta** (supra) (2008)2 SCC (L&S) 735 scanned various earlier judgments and summarized the principle laid down therein, which reads thus:

“35. The principles which can be culled out from the above-noted judgments 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 CPC.

(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."

13. In view of the principles of law laid down by the Hon'ble Supreme Court in aforesaid judgments, the arguments advanced by the learned counsel for the respondents for review of the order can not be entertained in the present proceedings as this Tribunal can not act as an appellate authority for correcting the errors in the order under review on merits as the same can only be effectively done by superior courts in appropriate proceedings.

14. Accordingly, the Review Application is dismissed.

  
(G.P.Singhal)  
Administrative Member

  
(Dhirendra Mishra)  
Judicial Member

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