

(Reserved on 16.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 24th DAY of August, 2018)

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Civil Misc. Delay Condonation Application No. 331/00127/2016

With

Civil Misc. Review Application No. 331/00010/2016

1. Union of India through Defence Secretary, Ministry of Defence, Government of India, South Block, New Delhi 110011.
2. Engineer in Chief, Army Headquarters, Kashmir House, Raja Ji Marg, DHQ, PO, New Delhi - 110011.
3. Chief Engineer, Central Command, Lucknow.
4. Commander Works Engineer, Dehradun Cantt.
5. Garrison Engineer, Dehradun Cantt.

.....applicants

V E R S U S

1. Ved Prakash Khanduri, aged about 57 years, S/o Late Nand Ram Khanduri, R.O 54/2, EMS Quarter Patiya Pump House, Supply Depot, Dehradun Cantt.
2. Puran Singh, aged about 55 years, S/o Late Jeet Bahadur, R/o 425, Garhi Cantt., Dandi, Dehradun Cantt.
3. Rajendra Kumar, aged about 56 years, S/o Roop Ram, R/o Village Chandmari, P.O. Ghangora, District Dehradun.
4. Satish Kumar aged about 59 years, S/o Late Tekchandra Mehta, R/o T-13, Patiya Pump House, Supply Depot, Dehradun Cantt.

.....Respondents

In

Original Application No. 331/00063 /2015.

Ved Prakash Khanduri and others.

.....Applicants

VERSUS

Union of India and others

.....Respondents

Advocate for the Review Applicants :- Shri D.S. Shukla
Advocate for the Respondents:- Shri S. Lal

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M.)

This Review Application No. 10/2016 has been filed on 5.12.2016 by the respondents in the OA No. 330/63/2015 (Ved Prakash Khanduri and others vs. Union of India and others), challenging the order dated 6.10.2016, by which the said OA was allowed by this Tribunal. Misc. Application No. 127/2016 for delay condonation has also been filed with the Review Application to condone the delay of about a month beyond 30 days allowed under the rules for filing of the Review Application (in short RA).

2. It stated in the application to condone delay that the impugned order dated 6.10.2015 was received by the RA applicants (to be referred hereinafter as 'respondents' and RA respondents be referred hereinafter as 'applicant'), in fourth week of October, after which, necessary approval of the higher authority was taken before filing the RA. In the process some delay has occurred in filing the RA. The delay was not willful.

3. This Review Application has been filed mainly on the following grounds:-

(i) The impugned order dated 6.10.2016 of the Tribunal directed for payment of arrears of pay and allowances to the applicants w.e.f. the date of initial appointment or promotion to the post of Valveman and for failure to pay within three months, interest @ 12% per annum will be payable from the date of order till the date of actual payment. But as per the orders of Hon'ble High Court of Jammu and Kashmir in one case of Abdul Majid Hajam and other which was decided by Chandigarh Bench of the Tribunal and which was relied on by the Tribunal while passing the impugned order, has ordered notional fixation of pay and payment of arrears was confined to a period of 18 months preceding the date of filing of the OA. This order dated 18.10.2012 of Hon'ble High Court of Jammu and Kashmir (Annexure 2 of the RA) was challenged in Hon'ble Apex Court in SLP which was dismissed vide copy of the

order dated 14.8.2014 in Annexure 3 of the RA. Hence, the issue has attained finality.

(ii) The respondents are entitled for the order similar to the order of Hon'ble High Court of Jammu and Kashmir dated 18.10.2012 in the case of Abdul Majid Hajam vs. Chief Engineer Air Force zone and others (Annexure 2 of the RA). This order was not in possession of the respondents, for which it could not be produced at the time of hearing of the OA.

(iii) The applicants were already promoted to the skilled grade since 25.9.2014, but the same was not considered at the time of consideration of the OA by the Tribunal. The paragraph 23 of the counter reply specifically stated that the skilled grade has already been given to the applicants from the date of their promotion. But this was not considered while passing the final order.

4. The applicants have filed Counter Affidavit opposing the delay condonation application stating that the RA has been filed with delay. The application for condonation of delay is not to be considered in view of the judgment of Hon'ble Apex Court in the case of Post Master General and others vs. Living Media India and another (2012) 1 SCC (L&S) 649. Hence, the application is liable to be rejected. In the Counter Affidavit filed by the applicants opposing the RA, it is stated that the respondents have implemented the judgment in OA No. 15/2016 in which the applicant Sh. Man Mohan Lal has been granted skilled grade and given full arrears from the date of his initial promotion to the post of Valveman in the same unit where the respondents are working, vide copy of order annexed at CA-1 and CA-2 of the Counter Affidavit. Hence, not extending the same benefit to the applicants will be a violation of Article 14 and 16 of the Constitution of India. It is further stated that a similar case, Mumbai Bench of the Tribunal has allowed the benefit from the date of appointment in the case of Prabhat Chandra vs, Union of India & Ors in OA No. 83/2013 reported in 2015(2) SLJ (CAT-Bombay) 200.

5. The respondents have filed Rejoinder denying the contentions in the Counter and reiterating the stand that the applicants will be entitled to arrear from 18 months prior to filing of OA as decided in

the case of Abdul Majid Hajam and others. There is no specific denial that full arrear benefit has been given to Sh. Man Mohan Lal as alleged in the Counter Affidavit.

6. We have heard learned counsel for the respondents (applicants of the RA), who vehemently argued that the delay in filing the RA can be condoned as per the Full Bench judgment of the Tribunal in the RA No. 185, 186 of 2006 and RA No. 138 of 2007 in O.A. No. 1124 of 2005 in the case of Raghava Reddy, AE (Civil) and Others vs. Union of India and Others, reported in 2010(1) SLJ (CAT), which, vide the judgment dated 14.5.2009, held as under:-

“49. When we apply these principles to the scheme of A.T. Act and rules framed there under we find though the provisions of A.T. Act provide no period of limitation, the rules framed under the Act have led to the conflict.

50. Rule 17 is in two part. It provides for a period of limitation of 30 days from the date of receipt of order. The rules provide for supply of free copies to the parties of the OA. In case of aggrieved third parties i.e., those who are directly and immediately affected, the period will have to reckoned from the date of knowledge. The period of 30 days is as provided in Article 124 of Schedule to Limitation Act. The other part of the rule is a prohibition on entertaining review applications after the expiry of period. This part is inconsistent with the scheme of A.T. Act and is therefore, contrary to the law laid down in the referred judgments. The Limitation Act will apply as held by the Full Bench of Hon'ble Calcutta High Court and Hon'ble Gujrat High Court.

51. In terms of the decision of the Full Bench of Hon'ble Calcutta High Court and Hon'ble Gujrat High Court, we hold that this Tribunal has the power to condone the delay in filing of review applications on sufficient cause being shown. The decisions of the Benches of the Tribunal contrary to this enunciation of law are held to be bad in law. The individual review applications may be placed before the concerned Benches for disposal in accordance with the law as explained above.”

7. Regarding merit, it was submitted by learned counsel for the respondents that the judgment of Chandigarh Bench in the case of Abdul Majid Hajam and others was relied by this Tribunal while passing the impugned order. But in the same case Hon'ble High Court of Jammu and Kashmir, vide order dated 18.10.2012 had allowed arrear for 18 months prior to filing of the OA and this order has been confirmed by Hon'ble Apex Court. Hence, the

impugned order dated 6.10.2016 is against this settled position of law.

8. Learned counsel for the applicants was also heard. He reiterated the stand in the Counter affidavit and also filed copy of following judgments in three cases on the merit of the Review Application: -

- i. Subhash Vs. State of Maharashtra & Anr. – ATJ 2002(1) 551.
- ii. Order dated 27.11.2014 passed by CAT, Principal Bench in R.A No. 216/2014 (in OA No. 3922 of 2013) – R.S. Sehrawat Vs. Union of India & Ors.
- iii. Order dated 02.03.2016 passed by CAT, Lucknow Bench in Review Application No. 332/00006/2016 in OA No. 523/2014 – Farzan Ahmad Vs. Union of India & Ors.

The judgment annexed to the Counter Affidavit for opposing delay condonation application was also referred to.

9. In view of the Full Bench judgment as referred above, the Tribunal can condone delay in filing the Review Application. In the case of Post Master General (supra) cited by the applicants' counsel in the Counter for delay condonation, there was delay of 427 days which was not explained satisfactorily, which is not the case in this RA. The delay in this case is less than a month which has been as the time taken to obtain approval of the competent authority, which is reasonable. Hence, the cited case is distinguishable. Accordingly, the delay in filing the present RA is condoned.

10. On merit, the RA mainly relies on the judgment of Hon'ble High Court of Jammu and Kashmir allowing arrear only for 18 months from the date of filing the OA and notional fixation of pay from the date of appointment/promotion, as against the impugned order dated 6.10.2016 allowing full arrear of pay from the date of promotion/appointment with interest. It was stated in the RA that such contentions in the Counter Reply in the OA, were not considered by the Tribunal while passing the impugned order. We

are unable to accept such contentions of the respondents that pleadings in this regard were not considered by the Tribunal, since the para 3 of the impugned order dated 6.10.2016 states as under:-

“3. In the counter reply filed on behalf of the respondents, it has been submitted that the skilled grade pay scale of Rs. 950 – 1500 has already been granted to the applicants from the date from which they were promoted to the grade of Valveman notionally and the payment of actual arrears has been restricted from 18 months prior to the date of filing of O.A. It is further stated that the pay of applicants has accordingly been fixed and arrears of pay has already been paid to them.”

It is clear from above that the contentions in the Counter Reply have been duly considered by the Tribunal while passing the order dated 6.10.2016.

11. Regarding the point relating to the order dated 18.10.2012 of Hon'ble High Court of Jammu and Kashmir, the said judgment was not considered by the Tribunal while passing the order dated 6.10.2016. The order dated 14.8.2014, dismissing the SLP filed against the order dated 18.10.2012 of Hon'ble High Court of Jammu and Kashmir was also not brought to the notice of the Tribunal at the time of hearing of the OA. The contention that the order of Hon'ble High Court of Jammu and Kashmir was not in possession of the respondents at the time of hearing of the OA, does not have force since in view of the pending litigations in different Benches of the Tribunal, the respondents should have briefed their officers and counsels about the order dated 14.08.2014 of Hon'ble Apex Court and of Hon'ble High Court of Jammu & Kashmir. With due diligence, non-production of these orders before the Tribunal at the time of hearing of the OA could have been avoided. Now the question before us is whether this reason given in the RA is acceptable for reviewing the impugned order.

12. The RA is considered by the Tribunal under Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC), which states as under:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.]”

From above provisions of the Rule 1 of the Order 47, the scope of review by this Tribunal is limited to the grounds of (i) discovery of any new and important facts or evidence which was not within the applicant’s knowledge and which, after exercise of due diligence, was not within his knowledge or could not be produced at the time of consideration of the O.A.; or (ii) some mistake or error apparent on the face of the record; or (iii) for any other sufficient reasons. In the case of *Ajit Kumar Rath vs. State of Orissa and Ors* – AIR 2000 Supreme Court 85, it was held by Hon’ble Apex Court as under:-

“The provisions extracted above 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 face of the record or for any other sufficient reason. 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. 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."

Hence, any other sufficient reason has to be analogous to the reason mentioned in the rule.

13. In this case, the impugned order dated 06.10.2016 had relied upon the judgment of different coordinate Benches of the Tribunal, including the case of Abdul Majid Hajam and others vs. Union of India and others which was decided by the Chandigarh Bench of the Tribunal. It is stated in para 7 of the RA that this judgment of Chandigarh Bench was subsequently overruled by the judgment of Hon'ble Jammu and Kashmir High Court vide order dated 18.10.2012, which could not be produced by the respondents before the Tribunal at the time of hearing of the OA. In our considered opinion, this ground cannot be taken as an acceptable ground for review, since it cannot be treated as new fact as the order of Hon'ble High Court of Jammu and Kashmir and of Hon'ble Apex Court were already available with the respondents at the time of consideration of the OA by this Tribunal which, with exercise of due diligence, could have been produced by the respondents before Tribunal, particularly since the respondents in this case are the same in the case of Abdul Majid Hajam. This ground cannot also be considered as an error or mistake apparent on the face of the record as this case was not cited before the Tribunal in the pleadings or brought to the notice of the Tribunal. It cannot be considered to be any other sufficient reason, since as per the ratio of the judgment in the case of Ajit Kumar Rath (supra), it means a

reason analogous to those specified in the rule 1 Order 47 of the CPC.

14. It is noted that this Tribunal, while exercising the power under the section 22 of the Administrative Tribunals Act to review its order cannot function like an appellate forum as per the judgment of Hon'ble Apex Court in catena of cases. . In the case of **State Of West Bengal And Others v. Kamal Sengupta and another - (2008) 8 SCC 612**, Hon'ble Supreme Court after taking into account almost entire case law on review, has held as under:

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of order 47 rule 1 cpc or section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

15. Hon'ble Supreme Court in **Andhra Pradesh State Road Transport Corporation Vs. Abdul Karim - 2007 (2) Scale page 129** has held that the review application cannot be lightly entertained. It should be entertained only when there are manifest error which crept up in the judgment resulting serious miscarriage of justice.

16. Further, the RA cannot be entertained on the grounds which were already considered in the OA. In the case of Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301, Hon'ble Supreme Court has held as under:

“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in [Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.](#) 2006 5 SCC 501, held as under: (SCC pp. 504-505, paras 11-12)

.....

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47 rule 1 cpc. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in [Chhajju Ram v. Neki](#) and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius** to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd.** [JT 2013 8 SC 275](#)

20.2 When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

17. It is also noted that apart from the case of Abdul Majid Hajam, there are other similar judgments of the Tribunal in different coordinate Benches, which have been relied upon by the Tribunal

as discussed in the impugned order dated 6.10.2016 and the status of implementation of these orders or the status of their challenge in higher forum has not been disclosed in the present Review Application. Applicant's Counter Affidavit has mentioned about the case of employee where he was allowed arrears from the date of promotion. The status in other cases mentioned in the impugned order has not been mentioned by the respondents.

18. In the circumstances, we do not find any valid ground, which is permissible under the Rule 1 Order 47 of the CPC, to justify review of the impugned order dated 6.10.2016 of this Tribunal in OA No 63/2015, as prayed for in the Review Application. Accordingly, the Review Application lacks merit and is dismissed.

MEMBER (J)

MEMBER (A)

Anand...