

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH****M.A. No.2341/2016 In
R.A. No.151/2016 In
O.A. No.1076/2015****New Delhi this the 20th day of September, 2017****HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

1. Union of India through
Director General, Ex-officio Secretary (Posts),
Ministry of Communication and I.T.,
Govt. of India, Department of Post,
Dak Bhawan, Sansad Marg,
New Delhi-01.
2. The Chief Post Master General
Delhi Circle,
New Delhi 110 001.
3. The Senior Superintendent of Post Offices,
Delhi East Division,
Delhi 110 051.
4. The General Manager (Finance)
Postal Accounts,
Delhi 110 054.Review Applicants in
RA/Respondents in OA

Versus

Subhash Chandra Mathur
S/o Late Bankey Lal
R/o D-137, Laxmi Nagar,
Delhi-110 092. ..Respondent in RA/Applicant
in OA

ORDER BY CIRCULATION**Hon'ble Ms. Nita Chowdhury, Member (A)****MA No.2341/2016**

This MA has been filed by the Review Applicants in Review
Application (RA) No.151/2016 claiming that the same has been filed by

them after a delay of 1 day as after receiving the order it was sent to the competent authority for advice/decision and according to the said advice, this RA has been filed on 13.05.2016, whereas, in fact, the same should have been filed on 12.05.2016. They have further submitted that the delay in filing the RA is neither intentional nor mala fide but beyond their control. Hence, they have prayed that the MA may be allowed.

In view of their assertion, the MA is allowed.

RA No.151/2016

The facts, in brief, are that while deciding the Original Application (OA) bearing No.1076/2015, this Tribunal considered all the issues raised by the Review Applicants and disposed of the same on merits on 18.03.2016 (Annexure-RA-1). The relevant part of the said order reads as under:-

“12. Ex facie, the argument of the learned counsel that no such amount can be recovered at the time of retirement of the applicant, has considerable force. On the contrary, learned counsel for the respondents has miserably failed to urge that under what provisions of law/rules such impugned amount can be recovered after the expiry of more than 16 years, that too without fault of the applicant. Meaning thereby, the respondents have violated with impunity the principle of natural justice and fell in grave error while passing the impugned recovery order on wholly unsustainable ground. The crux of law laid down by the Hon’ble Apex Court in **Rafiq Mashi** (supra) mutatis mutandis is applicable to the facts of the present case and is the complete answer to the problem in hand.

13. Thus seen from any angle, we are of the considered opinion that impugned order cannot legally be sustained in the obtaining circumstances of the case.

14. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

15. In the light of the aforesaid reasons, the instant OA is hereby accepted. The impugned order dated 24.06.2014 is hereby set aside, however, with no order as to costs.

16. It is needless to say that the applicant would be entitled to all/the whole of the amount which has been recovered from him within a period of three months. In case of any delay in payment of amount which has already been recovered from him after the said period, the Department of Posts will pay an interest at the rate of 12% per annum for the period of delay calculated from a period of three months from the date of receipt of certified copy of this order”.

2. Now the Review Applicants (respondents in the OA) have filed the present RA bearing No.151/2016 for reviewing the indicated order, mainly on the grounds which have already been considered by this Tribunal while deciding the main OA.

3. The main ground pressed into service by the Review Applicants to review the order is that the Tribunal has erred in holding that a mistake was made by them while giving the respondent (applicant in OA) the last instalment, i.e. TBOP scheme on 11.07.1998. They have further submitted that after grant of TBOP w.e.f. 11.07.1998 they withdrew the 3rd level financial up-gradation under MACP granted w.e.f. 01.09.2008 in the year 2014 vide audit objection issued by the Accounts Officer, pension section, O/o GM (Finance), Delhi-110054 vide letter dated 24.06.2014. Hence, they have pleaded that no mistake was committed by them while granting TBOP on 11.07.1998 and that too was detected in 2014 after expiry of 16 years. But, in fact, 3rd level financial upgradation was granted to the original applicant vide Memo dated

15.12.2010 which was withdrawn on 14.07.2014, i.e. within a period of 4 years.

4. It is now well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that 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 re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.***

5. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612.*** Having interpreted the scope of review and

considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

“(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 of 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”.

6. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicants have not pointed out any error apparent on the face of record warranting a review of the order dated 18.03.2016 (Annexure-RA-1). Moreover, the issues now sought to be

urged, were subject matter of the OA and have already been adjudicated upon by the Tribunal in detail.

7. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground is made out to entertain the present Review Application, which is accordingly dismissed.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh