

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-202/2013 in
OA-555/2011**

Reserved on : 06.04.2016.

Pronounced on :21.04.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Union of India : through

1. The Secretary, Govt. of India,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-110001.
2. The Secretary, Govt. of India,
Department of D.O.P&T.,
North Block, New Delhi-110001.
3. Chief Executive Officer,
Prasar Bharti,
PTI Building, Sansad Marg,
New Delhi.
4. Director General,
All India Radio,
Akashvani Bhawan,
New Delhi-110001.

..... Review Applicants

(through Sh. S.M. Arif, Advocate)

Versus

Sh. R.L. Malhotra,
S/o Sh. R.D. Malhotra,
Ex.Supervisor
In the office of Director, ESD
All India Radio, New Delhi
R/o A/A-242, Shalimar Bagh,
New Delhi-110088.

.... Respondent

(In person)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by respondents of OA-555/2011 for review of our order dated 08.11.2012, the operative part of which reads as

follows:-

"9. We are of the opinion that the applicant is to be treated as a Government servant from 20.08.1982. Prior to that, he was working as Staff Artist on contractual basis and it would not be possible in that capacity for him to be given the promotion. Therefore, we feel that when he was posted to the post of Supervisor (Pushtu) from the post of Translator (Pushtu), there was no doubt that it was financial upgradation but according to the ACP Scheme, the financial upgradation should be during the period of service with the Government. When the applicant joined as a Government servant on 20.08.1982, it will have to be seen whether he got any financial upgradation or promotion from that date onwards. We do not feel that the stand taken by the respondents is the correct one.

10. Therefore, we direct the respondents to give the applicant financial upgradation after twelve years from the beginning of his service as a Government servant with effect from 20.08.1982 and second financial upgradation after twenty four years. Accordingly, all arrears due to him shall be released within a period of two months from the date of receipt of a copy of this order, considering that the applicant has already retired. With the above directions, the OA is disposed of."

2. The review applicants (OA respondents) had challenged this order before Hon'ble High Court of Delhi by means of Writ Petition (C) No. 6304/2013. Before Hon'ble High Court of Delhi they pleaded that this Tribunal had committed an error inasmuch as it had relied on additional pleas taken by the OA applicant in his rejoinder without giving an opportunity to the respondents to file the sur rejoinder. Noting the above submissions of the review applicants, Hon'ble High Court granted them leave to withdraw the Writ Petition with right reserved to seek review of the Tribunal's order dated 08.11.2012. Hon'ble High Court had also directed that if this Tribunal were to come to the conclusion that it had approached the issue, which was fundamentally flawed, both procedurally as well as in law, then it would also consider condoning the delay in seeking review.

3. Accordingly, the respondents in OA have filed this review application along with an application for condonation of delay. However, neither in the

pleadings nor during the course of the arguments on this review application, they could indicate as to what were the additional pleas taken by the OA applicant in his rejoinder were relied upon by this Tribunal without giving an opportunity to them to file a sur rejoinder. In their review application, the review applicants have merely reiterated their pleadings in OA and have stated that the applicant had been promoted to the post of Supervisor (FL) (Pushtu) on the basis of his service as Translator-cum-Announcer on 3/4.03.1983 w.e.f. 20.08.1982. Further, it has been submitted that the post of Supervisor itself was a 100% promotional post and Translators-cum-Announcers with atleast 05 years experience and below the age of 58 years were eligible to be considered for promotion. The review applicants have gone on to state that OA applicant's pay on his promotion as Supervisor was fixed under FR-22(C) in the pay scale of Rs.1100-1600. Since he had also been granted one promotion, he was granted second financial upgradation under the ACP Scheme on completion of 24 years of service w.e.f. 31.12.2009. The Tribunal, therefore, committed an error by treating OA applicant's appointment as Supervisor as direct recruitment whereas actually it was promotion. On the basis of these pleadings, the review applicants have sought review of our order dated 08.11.2012.

4. On going through our judgment, we find that after noting submissions of both sides, this Tribunal had come to the conclusion that prior to 20.08.1982 i.e. the date on which he was appointed as Supervisor, the OA applicant was working on contractual basis and could not have been regarded as a government servant. Consequently, OA applicant's appointment as Supervisor has to be treated as a direct recruitment and not as promotion. The Tribunal had gone on to grant two financial upgradations under the ACP Scheme to him on completion of 12 or 24 years of service commencing from 20.08.1982.

5. After going through the entire judgment, we find that there was no error apparent on the face of the record in the same. The review applicants are questioning our findings by merely reiterating their pleadings and re-arguing the case. If they were aggrieved by the findings of this Tribunal, remedy lay elsewhere. They cannot be permitted to re-argue the case in the garb of a review application. If we were to allow this, we would be sitting in appeal over our own judgment. This is clearly beyond the scope of review application.

6. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

6.1 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"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 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 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.”

[Emphasis added]

6.2 In the case of **Gopal Singh Vs. State Cadre Forest Officers’ Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

“The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.”

7. In view of the above, we find that there is no merit in this review application and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

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(V. Ajay Kumar)
Member (J)