

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A.NO.54 OF 2015
(In OA No.967 of 2011)

New Delhi, this the 11th day of September, 2015

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

í í í ..

1. The Comptroller & Auditor General of India,
9, Deen Dayal Upadhyaya Marg,
New Delhi.
2. Accountant General (A&E),
Haryana,
Plot No.4 & 5, Sector 33B,
Chandigarh,
Haryana (Respondents in OA 967/11).... Applicants

(By Advocate: Mr.R.K.Jain for Mr.Arun Bhardwaj)

Vs.

Smt. Premwati,
w/o Shri Nav Rattan,
R/o B-3/123-124, Sector-6,
Rohini, New Delhi,
Retired as Primary Teacher from
GHS, Titlani, Bhiwani, Haryana (Applicant in OA 967/11).....Respondent

(By Advocate: Mr.Pawan Sharma with Mr.Dinesh Bhardwaj)

ORDER

I have perused the records of O.A.No.967 of 2011 and the present R.A, along with MA No.1091 of 2015, and have heard Mr.R.K.Jain, learned counsel appearing for the review applicants, and Mr.Pawan Sharma with Mr.Dinesh Bhardwaj, learned counsel appearing for the respondent(applicant in OA No.967 of 2011).

2. Review applicants were respondents in OA No. 967 of 2011.

The present review application was filed by them on 12.2.2015 under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, read with Section 22(3)(f) of the Administrative Tribunals Act, 1985, seeking review of the order dated 30.9.2011 passed in OA No.967 of 2011. Along with the R.A., the review applicants also filed MA No.1091 of 2015 seeking condonation of delay in filing of the RA.

3. Rule 17 of the Central Administrative Tribunal(Procedure) Rules, 1987, stipulates that no application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

4. As noted earlier, the R.A. was filed on 12.2.2015, and the review applicants filed MA No.1091 of 2015 seeking condonation of delay in filing of the R.A.

5. In MA No.1091 of 2015, the review applicants have stated that on receipt of copy of the Tribunal's order dated 30.9.2011(ibid), they moved the concerned authorities in the State Government of Haryana to take appropriate decision in the case of the respondent (applicant in OA No. 967/11) and communicate the same for payment of the dues of the respondent in compliance with the Tribunal's order. Several letters/reminders were issued by them to the concerned authorities in the State Government in the matter. In the absence of specific sanction/approval of the competent authority in the State Government, the claim of the

respondent could not be settled. The Director General, Elementary Education Department, State Government of Haryana, vide his letter dated 23.1.2015, intimated the review applicants that the respondent (applicant in OA No.967/11) was convicted under Sections 498A and 406 read with Section 34 IPC by the ACJM, Bhiwani; that the appeal filed by her was dismissed by the Sessions Judge, Bhiwani, on 13.10.2006 ; and that the Criminal Revision filed by the respondent is still pending before the Hon'ble High Court of Punjab & Haryana, Chandigarh. It was, therefore, intimated by the Director General, Elementary Education Department, State Government of Haryana, that the applicant was not entitled for pension, etc., and an appeal should be filed against the Tribunal's order dated 30.9.2011(ibid). The delay of 3 years, 4 months and 9 days in filing of the present R.A. is neither intentional nor deliberate, but due to the reason that the implementation, or otherwise, of the Tribunal's order dated 30.9.2011 (ibid) depended upon the Education Department of the State Government of Haryana, which was also not impleaded as a party-respondent in OA No.967/11.

6. The respondent (applicant in OA No.967/11), in her counter reply to MA No.1091/15, has, *inter alia*, stated that the cause shown by the review applicants cannot be said to be sufficient for condoning the delay of 3 years, 4 months and 9 days. Therefore, MA No.1091 of 2015 is liable to be rejected. Consequently, the RA is also liable to be rejected as being barred by delay.

7. During oral arguments, Mr.Pawan Sharma, learned counsel appearing for the respondent (applicant in OA No.967 of 2011) relied on the decision of the Tribunal in **R.S.Sehrawat v. Union of India and others**, RA No.216 of 2014, decided on 27.11.2014, to contend that the Tribunal has no power to condone the delay in filing of review application. On 10.9.2015, Mr.Pawan Sharma also filed a written note of submissions, along with copies of judgments, including the judgment, dated 8.8.2013, passed by the Hon'ble Supreme Court of India in **Kamlesh Verma v. Mayawati & others**, Review Petition (Crl.) No.453 of 2012 (Writ Petition (Crl.) No.135 of 2008). I have carefully perused the written note of submissions and the judgments relied on by Mr.Pawan Sharma in support of the case of the review respondent.

8. In **Raghav Reddy, A.E. & others v. Union of India**, 2010(1)SLJ (CAT) 1, the Full Bench of the Tribunal has held that the Tribunal has power to condone delay in filing of the R.A. In **Akshaya Kumar Parida (dead) and after him Manoj Kumar Parida & others v. Union of India and others**, W.P.(C) No. 5738 of 2008, decided on 3.2.2015, the Full Bench of the Hon'ble High Court of Orissa, after referring to the decision of the Hon'ble Supreme Court in **K.Ajit Babu & others v. Union of India and others**, (1997) 6 SCC 473, has held that the Central Administrative Tribunal can condone delay in filing of the R.A. filed under Rule 17 of the CAT (Procedure)Rules, 1987 read with Section 22(3)(f) of the A.T.Act, 1985. In view of the above decisions of the Full Bench of the

Tribunal and of the Hon'ble High Court of Orissa, I find it difficult to accede to the contention of the respondent in the RA that the Tribunal has no power to condone delay in filing of the RA on the basis of the Tribunal's decision in **R.S.Sehrawat's case** (supra) rendered by the Division Bench. This apart, in **R.S.Sehrawat's case** (supra), the parties did not invite the attention of the Division Bench to the Full Bench decision of the Tribunal in **Raghav Reddy's case** (supra), and the decision in **Akshaya Kumar Parida's case** (supra) was not rendered by the Full Bench of the Hon'ble High Court of Orissa when **R.S.Sehrawat's case** (supra) was decided by the Division Bench. Therefore, the decision in **R.S.Sehrawat's case** (supra) is of no help to the case of the respondent in R.A.

9. Now it has to be seen as to whether the review applicants had sufficient cause for not making the Review Application within the period of 30 days from the date of receipt of copy of the order dated 30.9.2011, which is sought to be reviewed. After considering the averments made by the review applicants in MA No.1091 of 2015, as narrated in paragraph 5 above, this Tribunal is satisfied that the review applicants had sufficient cause for not making the Review Application within the period stipulated under Rule 17 of the CAT (Procedure) Rules,1987. Therefore, MA No. 1091 of 2015 is allowed, and the delay in filing of the RA is condoned.

10. The respondent in the review petition, who was applicant in OA No.967 of 2011, had filed the said O.A. seeking the following reliefs:

- ð(i) To set aside & quash the order dt.24/09/10 to the extent it is written Provisional Pension and the observations by

which DCRG & Commutation of pension is not allowed till the conclusion of the criminal proceedings.

- (ii) To direct the respondents to release applicant's regular pension, commuted amount of pension and gratuity with 8% interest per annum from the date it was due till actual payment, within a fixed time period.
- (iii) Direct the respondents to give the applicant all consequential benefits following from grant of relief (i) & (ii).
- (iv) Award costs and
- (v) Pass any other order/direction as may be deemed just & proper in the facts and circumstances of the case.ö

11. In the O.A. it was, *inter alia*, stated by the review respondent that she joined as JBT (Primary) with Government of Haryana on 20.11.1984. She was given her 1st ACP w.e.f. 1.10.1998. She retired from service on attaining the age of superannuation on 31.8.2010. Due to pendency of criminal case under Section 498A IPC against her, the review applicants withheld her DCRG and did not pay her commutation of pension until conclusion of the said criminal case.

12. In the counter reply filed by the review applicants, it was, *inter alia*, stated that the review respondent was an employee of Haryana State Government. They were to authorize pensionary benefits as per the sanction orders issued by the pension sanctioning authority, and as per rules and instructions issued from time to time by the State Government. Gratuity and commuted value of pension would be authorized in favour of the review respondent as and when the requisite sanctions are received from the pension sanction authority on conclusion of the said criminal case.

13. Upon perusing the materials available on records of the O.A. No.967 of 2011, and after hearing the learned counsel appearing for the parties, the coordinate Bench of the Tribunal, by its order dated 30.9.2011 (*ibid*), allowed the O.A. and directed the review applicants to release regular pension, commuted amount of pension, and gratuity to the review respondent with 8% simple interest per annum from the date the payment was due within the period stipulated therein. The Tribunal also observed that the review applicants would be free to take action against the review respondent subject to the provision of Rule 8 CCS (Pension) Rules, 1972 at appropriate time.

14. In the present R.A., the review applicants (respondents in OA No.967 of 2011) have, *inter alia*, stated that the Tribunal has no jurisdiction over the employees of State of Haryana and hence the order, dated 30.9.2011 passed by the Tribunal in OA No.967 of 2011, being void *ab initio*, is liable to be reviewed and O.A. dismissed.

15. *Per contra*, the respondent (applicant in OA No.967 of 2011) has stated that the Tribunal, on considering the materials available on record, and after hearing the counsel for the parties, has passed the order dated 30.9.2011, *ibid*, allowing the O.A. The Tribunal's order dated 30.9.2011, *ibid*, has attained finality. There being no error apparent on the face of the record, there is no scope for reviewing the order dated 30.9.2011(*ibid*) and hence, the R.A. is liable to be dismissed.

16. **In Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.),** 1995(1) SCC 170, the Hon'ble Supreme Court has held 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-evidence and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured in a review proceedings.

17. **In Ajit Kumar Rath v. State of Orissa and others,** (1999) 9 SCC 596, 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. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

18. **In Union of India v. Tarit Ranjan Das,** 2004 SCC (L&S) 160, the Hon'ble Supreme Court has held 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 court in respect of the original order by a fresh order and rehearing the matter to facilitate a change of opinion on merits.

19. **In State of West Bengal and others v. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735, the Hon'ble Apex Court has scanned various earlier judgments and summarized the principles laid down therein which read 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.

20. The Hon'ble Supreme Court in **Kamlesh Verma vs. Mayawati & others**, 2013(8) SCC 320, has laid down the following contours with regard to maintainability, or otherwise, of review petition:

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* (AIR 1922 PC 122) and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius* (AIR 1954 SC 526) 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 vs. Sandur Manganese & Iron Ores Ltd.* (2013(8) SCC 337).

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 negatived.ö

21. Keeping in mind the principles laid down by the Honorable Apex Court in the above decisions, let me consider the claim of the review applicants and find out whether a case has been made out by them for reviewing the order dated 30.9.2011 passed in OA No.967 of 2011.

22. Section 14 of the Administrative Tribunals Act, 1985, reads thus:

ð14. Jurisdiction, powers and authority of the Central Administrative Tribunal:-

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
 - (i) a member of any All-India Service; or
 - (ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian not being a member of an All-India Service or a person referred in clause (c) appointed

to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation - for the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person other than a person referred to in clause (a) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.ö

23. Admittedly, the applicant, while serving as a Primary Teacher under the State Government of Haryana, retired from service on attaining the age of superannuation on 31.8.2010. Therefore, as per the provisions of Section 14 of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal can by no stretch of imagination be said to have jurisdiction, power and authority in relation to service matters concerning the applicant. Although the review applicants (respondents in OA No.967 of 2011) had specifically stated in their counter reply, vide paragraph 2, that the respondent (applicant in OA No.967 of 2011) was an employee of the State Government of Haryana, the Tribunal, instead of deciding the preliminary issue of maintainability of the O.A., proceeded to consider and decide the O.A. on merits, and allowed the same, vide its order dated 30.9.2011, *ibid*.

24. In **Kiran Singh v. Chaman Paswan**, AIR 1954 SC 340, the Hon'ble Supreme Court has held that it is fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action,

strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

25. In the light of above discussions, I have no hesitation in holding that the there is material error, manifest on the face of the order, dated 30.9.2011 (*ibid*), which undermines its soundness, inasmuch as the order dated 30.9.2011 (*ibid*) passed by the Tribunal without jurisdiction, power and authority in relation to service matters concerning the applicant, who was an employee of the State Government of Haryana, is a nullity.

26. Resultantly, The R.A. is allowed. The order dated 30.9.2011 passed in OA No.967 of 2011 is reviewed and/or recalled, and O.A. No.967 of 2011 is rejected as being not maintainable before the Central Administrative Tribunal. The respondent, i.e., applicant in OA No.967 of 2011, if so advised, may approach the appropriate forum for redressal of her grievance, if any.

No costs.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

AN