

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Review Application No.180/0005/2018
in Original Application No.180/00670/2014**

Monday, this the 12th day of February, 2018

CORAM:

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

N.Vasavan,
S/o.late K.Velu,
Retired Administrative Officer Grade II,
O/o. the Chief Engineer (Naval Works),
Military Engineer Services, Naval Base, Kochi - 4.
Residing at 'Santhi Nivas', Akhil Road,
Konthuruthy, P.O.Thevara, Kochi - 13. Review Applicant

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. Union of India
represented by the Secretary to Government of India,
Ministry of Defence, New Delhi - 110 011.
2. The Engineer-in-Chief,
Military Engineer Services,
Army Head Quarters, New Delhi - 110 011.
3. The Chief Engineer,
Head Quarters Southern Command,
Military Engineer Services, Pune - 411 001.
4. Controller of Defence Accounts,
No.618, Anna Salai, Teyampeth,
Chennai - 600 018.
5. Chief Engineer (NW),
Military Engineer Services,
P.O. Naval Base, Kochi - 682 004. Review Respondents

O R D E R (Under Circulation)

Per HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant in O.A.No.670/2014 is the Review Applicant. He filed O.A.No.670/2014 on the issue regarding the correct stage at which his pay should be fixed on pre-ponement of his promotion as Assistant with effect from 1.1.1996 ie. whether it is Rs.6500/- as originally fixed or Rs.6050/- as modified later by the Comptroller of Defence Accounts, Chennai (Respondent No.4 in the O.A.). This Tribunal vide Annexure R.A-1 order dismissed the O.A with the following findings :

"16. It has to be noted that the applicant's ante-dating of posting as Assistant is not by way of any promotion but by way of Court's order in terms of Annexure A-2 which has become final. Going by the court's order and Annexure A-1 communication it can be seen that it is only an upgradation granted to him as Assistant with effect from 1.1.1996. Therefore, naturally, the pay as on 1.1.1996 for the Assistant should be applied to him. Incidentally 1.1.1996 had happened to be the date of implementation of the new revised pay scale of Assistant as a sequel to the Vth CPC. The Vth CPC scale was granted to him and a fixation of his pay has been done which according to the respondents is Rs.6050/- and not Rs.6500/- as claimed by the applicant. We find that the aforesaid contention of the respondents is correct.

17. The act of the applicant exercising option for enjoying the revised pay as UDC with effect from 1.2.1996 and his claim that thereafter only his pay as Assistant is to be fixed with effect from 1.2.1996 i.e. the date on which his next increment fell due appear to have been exercised unwarrantedly, as what he has obtained was upgradation of his post of UDC to the grade of Assistant by virtue of the Tribunal's order and not by way of a regular promotion."

2. According to the Review Applicant an error apparent on the face of the records has crept in Annexure R.A-1 order because the findings of the Tribunal that what he has obtained was upgradation of his post of U.D.C to the grade of Assistant by virtue of the Tribunal's order and not by way of a regular promotion. According to him this is not correct because he was at

Sl.No.41 among the 165 persons promoted as Assistant against the vacancies of the year 1996-1997 and further that he was not there in the list of 418 empanelled for upgradation. According to him, he was promoted with effect from 13.3.1999 against the vacancies of the year 1996-1997 whereas his junior got upgradation with effect from 1.1.1996. According to the Review Applicant the effect of Annexure R.A.-1 order is that the applicant's promotion was pre-poled from 13.3.1999 to 1.1.1996 which was not a upgradation even though it was on the strength of the order obtained from the Chennai Bench of this Tribunal by those who are upgraded and not promoted.

3. The apex court in **State of West Bengal & Others v. Kamal Sengupta & Another (2008) 3 AISLJ 209** has laid down the principles to be followed while reviewing the orders passed by the Administrative Tribunals as follows :

- "(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 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 a 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."

4. On going through the grounds relied on by the applicant it appears to us that what the applicant seeks is re-hearing of the matter, not an error apparent on the face of the record which is easily perceptible from the record. Since the error pointed out by the Review Applicant can be discovered only by a long process of reasoning, it cannot be termed as an error apparent on the face of the record or is based on any of the grounds mentioned in Order 47 Rule 1 Code of Civil Procedure 1908.

5. We are not inclined to condone the delay in approaching this Tribunal with the present Review Application .

6. In the result, both R.A and M.A to condone delay are dismissed. No order as to costs.

(Dated this the 12th day of February 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in R.A.No.180/0005/2018 in O.A.No.180/00670/2014

- 1. Annexure RA-1** - True copy of the order in O.A.No.670/2014 dated 14.11.2017.
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