

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Review Application No. 180/00034/2018

in

Original Application No.180/00377/2016

Tuesday, this the 19th day of June, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

1. Union of India represented by the Secretary,
Department of Posts, New Delhi – 110 001.
2. Chief Post Master General,
Kerala Circle, Trivandrum – 695 033.
3. The Post Master General,
Northern Region,
Kerala Circle, Kozhikode – 673 011.
4. The Superintendent of Post Offices,
Tirur Division, Tirur – 676 104. **Review Applicants**

(By Advocate – Mrs. Mini R. Menon, ACGSC)

V e r s u s

1. Rajan N.P., aged 47 years,
Postal Assistant,
Kalpakancherry P.O.,
Residing at Nayar Padickal House,
Kallingal, Kalpankanchery P.O.,
Malappuram District – 676 551.
2. Jayadas A., aged 51 years,
Postal Assistant,
BP Angadi Post Office,
Residing at Achampat House,
Muthur, Tirur P.O.,
Malappuram – 676 101. **Respondents**

This Review Application having been considered by circulation, the
Tribunal on 19.06.2018 delivered the following:

ORDER (by circulation)

Per: E.K. Bharat Bhushan, Administrative Member

1. Through this Review Application No. 180/34/2018, the original respondents in OA 377/2016 seek to set aside the directions contained in the order dated 21.02.2018 on the ground that the order passed by this Tribunal is vitiated by error apparent on the face of the record. The two applicants in the OA had been appointed as Extra Departmental Branch Post Master (EDBPM - now called GDS) w.e.f. 23.01.1995 and 08.09.1995 respectively. They had appeared for recruitment to the cadre of Postman for the vacancies of the year 2002 with the examination having been conducted on 23.03.2004. On being successful, they were appointed as Leave Reserve Postmen on 20.07.2004. As the New Pension Scheme (NPS) came to replace the statutory pension scheme under CCS (Pension) Rules, 1972 for all employees recruited after 01.01.2004, the applicants pleaded for being included in the earlier scheme on the ground that they had been appointed to the vacancies for the year 2002. In line with the orders of this Tribunal in OA No. 724/2012 and OA No. 648/2013, this Tribunal ruled in favour of the applicants and ordered that they may be included under the Old Statutory Pension Scheme.

2. The applicants in the Review Application (respondents in the OA) appear to be under the impression that the order had been passed in the OA on the wrong premise that Postman is a promotion post of the GDS. If one goes through the order of the OA, it can be clearly seen that this was not the reasoning adopted while ruling in favour of the applicants in the OA.

3. Smt. Mini R. Menon, learned ACGSC appeared on behalf of the Review Applicants.

4. The scope for a review application is clearly defined in various orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another (2008) 3 AISLJ 209* has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon'ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon'ble Supreme Court culled out the principles which 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 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."

5. Further, the Hon'ble Supreme Court in the case of ***Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596*** has categorically held that a matter cannot be heard on merit in exercise of power of review and if the order or decision is wrong, the same cannot be corrected under the guise of power of review. The scope for review petition and the circumstances under which such power can be exercised was considered by the Hon'ble Apex Court in *Ajit Kumar Rath's case (supra)* and held as under:

"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. 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 of fact 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 CPC means a reason sufficiently analogous to those specified in the rule."

6. We may also add that the Hon'ble Supreme Court in the case of ***Meera Bhanja (Smt) v. Nirmala Kumari Choudhury (Smt) (1995) 1 SCC 170*** held as under :

"The 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. The review petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on

points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226."

7. Keeping in mind the law set out by the Hon'ble Supreme Court, we have examined the ground urged by the Review Applicants, but do not find any error of fact or law in the order dated 21.02.2018 in OA No. 377/2016. The Review Applicants have failed to point out any error much less an error apparent on the face of the record justifying the exercise of power under sub clause (f) of sub-section(3) of Section 22 of the Administrative Tribunals Act, 1985. The Review Application deserves to be dismissed and accordingly the same is dismissed. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

Yd

List of Annexures of the Review Applicants

- | | | |
|----------------------|---|--|
| Annexure RA-1 | - | True copy of the order dated 21.02.2018 in OA 377/2016. |
| Annexure RA-2 | - | True copy of the Judgment in CA Nos. 90/2015 and 91/2015. |
| Annexure RA-3 | - | True copy of the Judgment in CA No. 13675-13676 of 2015. |
| Annexure RA-4 | - | True copy of the Judgment in OP(CAT) 327/2016. |
| Annexure RA-5 | - | Extract of the Judgment in Sri. Surinder Singh and others. |
| Annexure RA-6 | - | True copy of the letter No. 45-95/87-SPB-I dated 12.04.1991. |
| Annexure RA-7 | - | True copy of the letter No. 01-07/2016-SPB-I dated 22.07.2016. |

Annexure RA-8 - True copy of the letter No. 6-1/2009-PE-II issued by Postal Directorate dated 09.10.2009.

Annexure RA-9 - Extract of rules for GDS, under Service Discharged Benefits Scheme (SDBS), 2011.

Annexure RA-10 - Extract of Director General instruction on payment of ex-gratia gratuity.

Annexure RA-11 - True copy of the judgment of this Hon'ble Tribunal dated 16.03.2018 in OA No. 249/2017.

List of Annexures of the Respondents

Nil.
