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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Review Application No.180/0033/2018
in Original Application No.180/00035/2016**

Monday, this the 18th day of June, 2018

CORAM:

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

Rajeev.E.V.,
S/o.E.R.Vasudevan,
Senior Accountant/Pay & Accounts Office/
Custom House, Kochi – 682 009.
Residing at Eranezhath House,
Talikulam P.O., Trichur District – 680 569.

...Review Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Finance, New Delhi – 110 001.
2. The Principal Chief Controller of Accounts,
Central Board of Excise & Customs,
1st Floor, AGCR Building, New Delhi – 110 002.
3. The Deputy Controller of Accounts,
Central Board of Excise & Customs (SZ),
Room No.202, 2nd Floor, Central Excise Annexe Building,
No.26/1, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
4. The Pay & Accounts Officer,
Pay & Accounts Office,
Custom House, Kochi – 682 009. ...Review Respondents

O R D E R (Under Circulation)

Per HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

By this Review Application No.180/33/2018, the Original Applicant in O.A.No.180/35/2016 has sought review of order dated 21.3.2018 on the ground that the order of this Tribunal is vitiated by an error apparent on the

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face of the record. It is stated in the R.A that this Tribunal had disregarded the contentions raised in the O.A that the applicant was eligible for third financial upgradation with effect from 25.6.2011. Examining the contentions raised in the O.A this Tribunal had taken a different view and had concluded that the applicant was eligible for the benefit as claimed only with effect from 7.8.2015 when he completed 30 years of service as per MACP Scheme. The applicant has prayed for a review of the order on the ground that the decision taken by this Tribunal is contrary to certain other orders of other Benches of this Tribunal.

2. The order in the O.A had been issued on 21st March 2018 and review application is to be filed within 30 days from that date. This review application has been filed on 21st May 2018 and admittedly there is a delay of 29 days. The applicant has filed M.A.No.180/667/2018 seeking condonation of delay. The applicant submits that he could not file the R.A in time due to the reason that this Tribunal was on vacation. The summer vacation for the Tribunal had commenced only from 14th April 2018 and we feel that the reason adduced for the delay is not a valid one.

3. 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

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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."

4. 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 :

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“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.”

5. 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.”

6. Further the Hon'ble Supreme Court in **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and others** – (1979) 4 SCC 389 : AIR 1979 SC 1047 held :

*“3.It is true as observed by this Court in *Shivdeo Singh V. State of Punjab*, AIR 1973 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres 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*

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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 manner of errors committed by the Subordinate Court."

7. The Hon'ble Supreme Court in ***Haridas Das V. Usha Rani Banik (Smt) and others – JT 2006(3) SC 526*** held as under:

"Under O.47 R.1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under O.47 R 1 CPC. In exercise of the jurisdiction under O.47 R.1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

8. The review applicant has failed to point out any error much less an error apparent on the face of 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. M.A. No.180/667/2018 for condoning the delay in filing the R.A also stands dismissed. No costs.

(Dated this the 18th day of June 2018)

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

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in R.A.No.180/00033/2018 in O.A.No.180/00035/2016

- 1. Annexure RA-1** – True copy of the order dated 21 March 2018 in O.A.No.180/00035/2016 rendered by this Hon'ble Tribunal.
- 2. Annexure RA-2** – True copy of the order in O.A.No.170/00187/2016 dated 21 July 2017 rendered by the Bangalore Bench of the learned Central Administrative Tribunal.
- 3. Annexure RA-3** – True copy of the judgment in W.P.No.47005/2007S-CAT dated 8 January 2018 rendered by the Hon'ble High Court of Karnataka.
