

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Review Application No.180/00050/2017

in
ORIGINAL APPLICATION NO.183/2013
with
Misc. Application No. 180/00739/2017

Friday, this the 27th day of July, 2018

CORAM

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER

The Chairman and Managing Director
BSNL Corporate Office
Bharat Sanchar Bhavan, Janpath
New Delhi – Pin 110 001

... **Review Applicant**

[By Advocate Mr.V.Santharam]

V.

1. Padmanabhan K.V (Retired as Deputy General Manager, BSNL)
6/640, Lakshmi Nivas, Manalmantha Road
Ambikapuram P.O, Palakkad – 678 011
 2. K.M.Joseph, (Retired as Deputy General Manager (CM & HR),
BSNL, Thekkummuriyil House, Vaylamkulam P.O
Thiruvalla, Kerala
 3. G.Mathai (Retired as Deputy General Manager (Marketing),BSNL,
Paravillayil, 61 Puliyoor Gardens, Nalanchira
Trivandrum -15
 4. Padmakumar.K.S, (Retired as Deputy General Manager (Udaan), BSNL
Lakshmi Priya, Krishnapuram, Neyyattinkara P.O
Trivandrum – 695 121
 5. J.Samuel, (Retired as Deputy General Manager (BP/IT)BSNL),
T.C. 14/1678,Anugraha, Kadakkal Lane
Kannam Moola, Trivandrum – 695 011
 6. T.Chacko, (Retired as Deputy General Manager(Urban) BSNL),
B.N.28,Thottathil, pongummodu, Trivandrum -695 011
 7. Leelamani Amma.J
(Retired Deputy General Manager(HR & Admin)
BSNL), Prasanthi,Vayalar Post, Cherthala
Alappuzha District -688 536
- ... **Review Respondents**

(By Advocate Mr.S.Radhakrishnan)

This Review Application having been finally heard and Reserved for orders on 25.7.2018, the Tribunal on 27.07.2018 delivered the following.

ORDER

PER: ASHISH KALIA, JUDICIAL MEMBER:-

This Review Application is filed by the respondents in the Original Application to review the Annexure RA2 order dated 19.12.2016 passed by this Tribunal in OA 183/2013 for the reason that there is an error apparent on the face of the impugned order Annexure RA2.

2. The Original Application No. 183/2013 has been disposed vide order dated 19.12.2016 with the following directions:

“25. Annexure A-2 order was specific that in officiating promotion, where executives' pay scale is the same as that of promoted post, benefit of one increment in the current scale of the executive which is equivalent to the scale of pay in higher post shall be granted on promotion. The local arrangements by the Circle is made to fill up vacancies on local basis as arrangements on all India basis was not made by the BSNL Corporate Office. So the reference to all India seniority etc. is quite irrelevant in the context of prevailing situation of local officiating continuous and long arrangement and hence Annexure A-8 order cannot curtail the benefits granted under Annexure A-2 policy of the BSNL. The averment that granting extra increment on local officiating promotion will create anomalies in pay with respect to senior executives outside the circle has to be addressed separately in accordance with law. That would certainly not be a reason to deny adhoc or regular promotion benefits. The applicants also argued that on an all India basis there is no uniformity in the pay of junior and senior from State to State. Anomaly on pay fixation is not a reason for refusing the applicants the benefit of one increment in the current scale, when pay in the current scale and scale in the promotional higher DGM post is the same.

26. Where the vacancies existed for long periods, making arrangement on local officiating basis with technical break should have been replaced with adhoc arrangements, so that officials would have got the benefit of discharging higher responsibility in higher post. Exigencies of public service necessitates such arrangements on a local basis. Such arrangements would not attract officers on all India seniority, who would rather give preference for a regular promotion. When a person continues in a post for a long period i.e. one year and more such an appointment cannot be termed as stop-gap or fortuitous. It is not an arrangement made by accident or chance but one made by design by a well thought out process. In service jurisprudence this is not a temporary contingency but a long term arrangement to meet administrative needs. It was obviously not possible to leave the higher post vacant and in order to meet the contingency, an arrangement was made wherein applicants' services were utilised for the higher post for long periods. It was not fortuitous since such long term vacancies should have been reasonably foreseen and regular arrangements made. However, not having made so, the benefits should not be denied to those who served in the 2nd respondent's hour of need.

27. The benefit of one increment is to be extended in the case of officials on local officiating basis for long periods in view of the fact that Annexure A-2 order made it

*abundantly clear to grant one increment irrespective of their status in the substantive grade. The Apex Court judgment in **Tarsem Singh's** and **M.R. Gupta's** case on limitation are not applicable to a case of recurring cause of action. Those decisions have no relevance in view of various other decisions of the Apex Court where the cause of action is held to be having a continuing and recurring effect like fixation of salary and pension. The claim for extra increment is by the virtue of the position held by the applicants in officiating capacity in the higher post of the JAG cadre performing higher duties and responsibilities for long periods with artificial breaks for which adhoc or regular arrangements could have been made. This would not apply to the first applicant whose period of officiating promotion was very short, for 40 days only.*

28. *The prayer in the Original Application is accordingly allowed in respect of all except the first applicant. No order as to costs."*

4. Alongwith the Review Application, the Review Applicants have filed an M.A.No.739/2017 to condone the delay of 191 days in filing the above Review Application. The grounds narrated for condoning the delay are attributable to administrative reasons by the review applicants.

5. We have heard Mr. V. Santharam, learned Standing Counsel for the Review Applicants and Shri S.Radhakrishnan, learned counsel for the respondents in the RA. They have been heard and documents/pleadings perused.

6. As per Rule 17(1) of CAT (Procedure) Rules, the review against an order is to be filed within thirty days. In this case, admittedly there is a delay of 191 days and M.A.No.180/739/2017 has been filed seeking the condonation of the said delay. The grounds submitted as reason for delay are as mentioned in Para 4 of the order. Clearly it can be seen the delay has been of inordinate length. We may usefully refer to the judgment of the Hon'ble Supreme Court in the case of **Chennai Metropolitan Water Supply and Sewage Board Vs. T.T.Murali Babu (2014) 4 SCC 108**, wherein it is held as under :

“the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an

aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant, a litigant who has forgotten the basic norms, namely, procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

It was further held therein:

.....A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

Thus on the ground of delay itself, this R.A is liable to be rejected.

7. 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."*

8. 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."

9. 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.”

10. 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 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.”

11. 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' “

12. Bearing mind the above laws set out by the Hon'ble Supreme Court, we have examined the grounds urged by the Review Applicants in support of their prayer for reviewing the order. The core contention raised by the applicant in the R.A is to the effect that due to an inadvertent omission on the part of the Review Applicant Annexures RA1, RA3 and RA4 could not be produced during the hearing of the Original Application No. 183/2013 and this Tribunal did not get a chance to peruse the same and accordingly the order in the above original application has happened to be passed.

13. Admittedly Annexures RA1, RA3 and RA4 orders were not brought to the notice

of this Tribunal when OA 183/2013 was considered. This was a fault on the part of the Review Applicant and does not qualify as an error of fact or law in the order said to be reviewed. Thus the Review Applicant has 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. MA for condonation of delay also stands dismissed as no cogent and acceptable reasons have been advanced for the inordinate delay. No costs.

(Ashish Kalia)
Judicial Member

(E.K. Bharat Bhushan)
Administrative Member

sj*

List of Annexures

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| Annexure RA-1 | - | True copy of the decision of the Hon'ble Supreme Court in Union of India and another Vs. R.Swaminathan (1997) INSC 728 |
| Annexure RA-2 | - | True copy of the order dated 19.12.2016 in O.A No.183 of 2013 |
| Annexure RA-3 | - | True copy of the order dated 22.5.2013 in O.A No.699 of 2011 passed by the Hon'ble CAT, Calcutta Bench |
| Annexure RA-4 | - | True copy of the order dated 30.04.2013 in O.A No.780 of 2012 passed by the Hon'ble Central Administrative Tribunal, Delhi Bench |
| Annexure RA-5 | - | True copy of the letter No.61-01/2013 – (Pers-Legal) dated 5.5.2017 issued by the AGM (Pers-Legal), Personnel (Legal) Section, BSNL Head Office, 4 th Floor, BSB, Janpath, New Delhi-01 |
| Annexure RA-6 | - | True copy of the Modified Assured Career Progression Scheme (MACP) |

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