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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Review Application No.180/00043/2018
in Original Application No.180/00299/2018**

Friday, this the 14th day of September, 2018

CORAM:

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

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Information and Broadcasting,
BA (P) Section, 'A' Wing, New Delhi – 110 001.
2. The Chief Executive Officer,
Prasar Bharati Secretariat, 7th Floor,
Copper Nicus Marg, New Delhi – 110 001.
3. Director General,
All India Radio, Akashwani Bhawan,
Sansad Marg, New Delhi – 110 001.
4. The Assistant Station Director,
All India Radio, Thrikkakara P.O., Kochi – 682 021.
5. The Senior Accounts Officer,
Pay and Accounts Office,
All India Radio, Mylapore, Chennai – 600 004. ...Review Applicants

(By Advocate – Mr.N.Anilkumar)

V e r s u s

K.S.Saffia,
W/o.late M.K.Abdulla,
Working as Administrative Officer,
All India Radio, Thrikkakkara P.O., Kochi – 682 021.
Residing at Madathil House, Cheranallur P.O.,
Edapally, Kochi – 682 034. ...Review Respondent

O R D E R (Under Circulation)

The Review Application has been filed by the Respondent Nos.1-5 in
the O.A seeking a review of the order passed by this Tribunal on 30.7.2018.

The relevant part of the order reads as follows :

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13. Respondents, presumably out of zeal to save the resources of the public exchequer had initiated recovery but we wish the zeal had been exhibited in the care with which they examined cases while according revision in salary and other emoluments. Having committed a gross error they cannot spring surprises on unwary employees who are on the threshold of superannuation and unilaterally enforce large recoveries. The judgment in Rafiq Masih clearly covers the field in this respect and none of the judicial orders produced by the respondents in any way involve similar circumstances as those in this O.A.

14. The O.A succeeds. The entire amount recovered from the gratuity due to the applicant is to be refunded to the applicant within 30 days of receipt of a copy of this order. There shall be no further recovery from the applicant's pension or other benefits due to her. The O.A stands disposed of. No costs.

2. In the R.A the Review Applicants have produced Annexure RA-2 dated 2.3.2016 and Annexure RA-3 dated 6.2.2014 which were issued in the light of the judgments of the Hon'ble Supreme Court in **State of Punjab & Ors. v. Rafiq Masih (White Washer) in C.A.No.11527/2014** and **Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors. (2012) 8 SCC 417** respectively. Both O.Ms lay stress on recovery of over payment.

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 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:

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“(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:

“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

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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. In the Review Application the applicants who are Respondent Nos.1-5 in the O.A have chosen to contest the decision on the ground that the initiative for recovery of amounts from the applicant in the O.A had been due to the commitment on the part of the official respondents in the O.A (applicants herein) to conserve tax payers money. They quote from DoP&T O.M dated 6.2.2014 which relied on the decision of the Hon'ble Supreme Court in **Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors. (2012) 8 SCC 417.**

6. As pointed out the scope of a review is limited to the extent that recall of a order can be sought if there had been an error apparent on the face of the record warranting such recall. In this R.A no such grounds have been advanced and an attempt has been made merely to reiterate the same arguments raised in the O.A itself. An issue is made out that DoP&T O.M dated 6.2.2014 issued following Chandi Prasad Uniyal's case (supra) has guided their action. This Tribunal had arrived at the conclusion based on **State of Punjab & Ors. v. Rafiq Masih (White Washer) in C.A.No.11527/2014** issued on 8.7.2014 which clearly followed the Chandi Prasad Uniyal's judgment.

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7. In any case no error apparent on the face of the record has been brought forward in the R.A. Accordingly, the R.A is dismissed as lacking in merit.

(Dated this the 14th day of September 2018)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in R.A.No.180/00043/2018 in O.A.No.180/00299/2018

- 1. Annexure RA-1** – True copy of the order dated 30.7.2018 in O.A.No.180/299/2018.
 - 2. Annexure RA-2** – True copy of the DoP&T's O.M.No.18/03/2015-Estt. (Pay-I) dated 2.3.2016.
 - 3. Annexure RA-3** – True copy of the DoP&T's O.M.No.18/26/2011-Estt. (Pay-I) dated 6.2.2014.
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