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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Review Application No.180/00051/2018
in Original Application No.180/00154/2017**

Thursday, this the 27th day of September, 2018

CORAM:

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

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Finance, New Delhi – 110 001.
2. Controller General of Accounts,
Ministry of Finance, Department of Expenditure,
7th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi – 110 003.
3. The Principal Chief Controller of Accounts,
Central Board of Excise and Customs, 1st Floor,
AGCR Building, New Delhi – 110 002.
4. The Deputy Controller of Accounts,
Central Board of Excise and Customs, 3rd Floor,
Central Excise Annexe Building, 121,
Mahatma Gandhi Road, Chennai – 34.
5. The Senior Accounts Officer,
Pay and Accounts, Customs,
Cochin – 682 009.Review Applicants

(By Advocate – Mr.N.Anilkumar)

V e r s u s

C.S.Prem,
S/o.C.G.Stephen,
Accountant, Pay and Accounts,
Customs, Kochi – 682 009.
Residing at Chiramel House,
Kootungal Lane, Kochupally Road,
Thoppumpady, Kochi – 682 005.Review Respondent

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O R D E R (Under Circulation)

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

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 31.1.2018. The relevant part of the order reads as follows :

6. The question involves a single issue whether the period spent on deputation would qualify as regular service for reckoning the eligibility criteria for promotion. The respondents in the reply statement has drawn our attention to OM No. A.34012/142/2006/Syllabus Review/MF.CGA(E)/68 dated 4.8.2008 and goes on to state that "service rendered while on deputation will be reckoned for the purpose of considering eligibility to appear in the examination for JAO and not promotion to the post of Senior Accountant". However a reading of the above OM conveys an entirely different picture. The OM deals with amendment to Rules, Regulations and Syllabus of the Junior Accounts Officer (Civil) Examination. The following is mentioned as addition to Para 4.1:

"Note:- In the case of persons who have joined the Central Civil Accounts Service (CCAS) as Accountants initially on deputation basis and who have been absorbed subsequently in the said Service in accordance with the provisions contained in the Central Civil Accounts Service (Group C) Recruitment Rules relating to the post of Accountants, the period of three years mentioned in Para 4.1 will be counted from the date of their joining the CCAS as Accountant on deputation basis. However, they will be eligible to appear in the Examination only if they have passed the Departmental Confirmatory Examination for Accountants on the date their names are sponsored by the concerned PrCCA/CCA/CA."

The assertion is clear and categoric and there is absolutely no room for any ambiguity in so far as the merit of the applicant's case is concerned.

7. OA succeeds. The respondents are directed to consider the applicant for promotion as Senior Accountant for the vacancy years of 2016-17 and promote him as Senior Accountant with all consequential benefits at par with those who have been promoted pursuant to Annexure A8 OM. No order as to costs.

2. The review applicants have, along with this R.A, filed M.A.No.180/1068/2018 for condoning the delay of 195 days in filing the R.A .

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3. The provision under Rule 17(1) of CAT (Procedure) Rules states that a review application is to be filed within thirty days from the date of receipt of copy of the order sought to be reviewed. In this case there has been a long delay of 195 days in filing the R.A reasons for which have not been adequately explained. 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.”

4. Further, 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

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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."**

(emphasis supplied)

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5. A review application will stand only if it is concluded that an error apparent on the face of the record has occurred while issuing the order. In this particular case the reason for seeking the recall is that a particular document could not be brought before the Tribunal. This is not admissible as per Clause (viii) of the decision in *State of West Bengal & others v. Kamal Sengupta and another (2008) 3 AISLJ 209.*

6. The Review Application is dismissed on account of delay in filing the same as well as on the ground that no error apparent on the face of the record has been indicated, warranting recall of the order in the O.A issued on 31.1.2018. No costs.

(Dated this the 27th day of September 2018)

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

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List of Annexures in R.A.No.180/00051/2018 in O.A.No.180/00154/2017

1. **Annexure RA-1** – True copy of the OM dated 29.5.1986.

2. **Annexure RA-2** – True copy of the order dated 31.1.2018 in O.A.No.154 of 2017.
