

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REVIEW APPLICATION NO. 170/00005/2017

AND

REVIEW APPLICATION NO. 170/00007/2017

IN

ORIGINAL APPLICATION NO.854-863/2013

DATED THIS THE 05TH DAY OF FEBRUARY, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

REVIEW APPLICATION NO. 170/00005/2017

1. T.Mudalagiriyappa,
S/o Shri.Thimmappa
Aged about 53 years,
Income-tax Officer,
Davanagere.

2. Prakash H.Alalageri,
S/o Shri.Hanumantheppa A.A.
Aged 51 years,
Income-tax Officer, Haveri

3. Y.M.Navalgund,
S/o.Sri.Mahadevappa,
Aged 50 years,
Income-tax Officer, Hubli.

4. Parameshwara
S/o Sri Balya Naik M.,
Aged 44 years,
Income-Tax Officer, Karawar

5. Nalini A.,
W/o Sri.Prabhakaran
Aged 51 years,
Income-tax Officer,
Kormangla, Bangalore.

6. N Lokesh
S/o Shri M. Narayana,
Aged 48 years,

Income-tax Officer, Shimoga

7. Nithyanandan R.
S/o Shri M. Ramalingam,
Aged 53 years,
Income-tax Officer,
Kormangla, Bangalore.

8. Ravi Kumar,
S/o Shri.Dasappa
Aged 53 years,
Income-tax Inspector,
Kormangla, Bangalore

.....Review Applicants

(By Advocate Shri T.C. Gupta)

Vs.

1. Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi – 110 001.

2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi – 110 001.

3. The Pr. Chief Commissioner of Income Tax,
Karnataka and Goa Region,
C.R. Building,
Bangalore – 560 001

.... Review Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

REVIEW APPLICATION NO. 170/00007/2017

1. The Union of India,
Represented by its Secretary,
Incharge of Central Board of Direct
Taxes, Jeevan Deep Building
Parliament Street
New Delhi – 110 001.

2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi – 110 001.

3. Chief Commissioner of Income Tax,
Bangalore – 1, Central Revenue Building
Queen's Road,

Bangalore – 560 001
 (By Shri M.V. Rao, Senior Panel Counsel)

.... Review Applicants

Vs.

1. Sri.T.Mudalagiriyappa, 50 years
 S/o Sri.Thimmappa
 Occn: Income Tax Officer,
 Ward-2, Ward-1, P.B.Road
 Haveri:581110.

2. Sri.Ravish K.N., 45 years
 S/o Sri.K.Narayana Naik
 Occn:Income Tax Officer
 Ward-1 Radhika Plaza, Court Road
 Puttur: 574 201 (D.K.District).

3. Sri.Prakash H.Alalageri, 48 years
 S/o Sri.Hanumanthappa A.A.
 Occn: Income Tax Officer,
 Ward-3, Park View Building,
 P.G. Extension
 Davangere:577 002.

4. Sri.Y.M.Navalgund, 47 years
 S/o.Sri.Mahadevappa
 Occn:Tax Recovery Officer Range-1
 Income Tax Office
 Belgaum:590 001.

5. Sri.Parameshwara M., 41 years
 S/o Sri Batya Naik M.,
 Occn: Income Tax Officer Ward-1
 Santeri Krupa Building
 Kaiga Road
 Karwar: 581 306.

6. Sri. D.Thippeswamy, 49 years
 S/o Sri.Divakarappa G.
 Occn:Income Tax Officer Wrd-2(2)
 O/o Joint Commissioner of Income Tax Range-2
 HUDA Buildings, Navanagar
 Hubli:580 025.

7. Smt.Nalini A., 48 years
 W/o Sri.Prabhakaran
 Occn:Income Tax Officer Ward 6(3)
 R.P.Bhavan, Nrupathunga Road
 Bangalore: 560 001.

8. Sri Ravi Kumar, 50 years
 S/o Late Sri.Dasappa
 Occn: Income Tax Officer Ward 14(1)
 O/o Joint Commissioner of Income Tax

HMT Bhavan, Ganganagar
Bellary Road, Bangalore: 560 032.

9. Sri.N.Lokesha, 45 years
S/o Late Sri.M.Narayana
Occn: Income Tax Officer
Aayakar Bhavan
Belur Road
Hassan:573 201.

10. Sri.Nithyanandan R., 50 years
S/o.Sri.M.Ramalingam
Occn: Income Tax Officer
Ward-3 (4)
O/o Joint Commissioner of Income
Tax Range-3
C.R.Buildings, Navanagar
Hubli:580 025.Review Respondents

(By Advocate Shri T.C. Gupta)

ORDER

(HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A))

Both the Review Applications have sought review of the order dated 22.04.2016 in OA No. 854-863/2013 and hence have been taken together for consideration and passing a common order.

2. The Review Application No 05/2017 have been filed by the applicants in the original OA. In the said Review Application, they have referred to the earlier orders passed by this Tribunal on 17.01.2003 in OA No. 1724 & 1753-1775/2001 and order dated 17.08.2005 in OA No. 510/2004, 740 & 760-767/2004 and stated that both the orders are self-contradictory. They have also referred to an earlier order passed by this Tribunal on 29.11.2013 and 18.06.2014 wherein it was observed that the objections were not considered by the CCIT appropriately and they were directed to consider representation/objection and pass a considered and reasoned order. However the matter was taken to the Hon'ble High Court of Karnataka in WP No. 31977-32000/2014 and the connected Writ Petitions. The matter was remanded back to the Tribunal for fresh consideration. The applicants have referred to the Recruitment Rules/IT Rules, appointment of SC/ST

candidates for promotion on their own merit and the Hon'ble Supreme Court decision in the case of R.K. Sabharwal and said that the order did not consider these aspects and hence is self-contradictory. The applicants have also mentioned that the order has been authored by the Member (Administration) and hence is without competency and illegal.

3. The original respondents in OA No. 854-863/2013 had filed the RA No. 07/2017 in which they have submitted that the Tribunal vide order dated 22.04.2016 had upheld the OM dated 28.08.2013 issued by the Chief Commissioner of Income Tax and hence the direction to protect the pay and increment availed by the applicant who were to be reverted from the date they started working as Income Tax Officers on personal basis is not justified. They have quoted FR 31 A regarding re-fixation on de-confirmation and says that the service rendered by the government servant in the post to which he was wrongly promoted/appointed as a result of the error should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/appointment. Therefore they submit that the promotion given to the respondents erroneously has to be brought down to the position they would have held but for the erroneous promotion. They have also mentioned that pursuant to the order of the Tribunal the number of Officers drawing pay in a particular cadre will be more than the sanctioned strength in the cadre. Hence they prayed for review of the order so far as relate to allowing protection of pay and increment availed by the respondents from the date they started working as Income Tax Officers on personal basis.

4. In both the Review Applications the concerned respondents have filed reply statement. In the case of RA No. 05/2017 the respondents who are the original respondents in the OA submitted that through the Review Application the

applicants are indirectly contesting the decision of this Tribunal dated 17.08.2005 which is not agitated against in OA No. 854-863/2013. The memorandum dated 28.08.2013 which was challenged in the present OA, i.e., OA No. 854-863/2013 was issued in terms of the direction of the Tribunal dated 17.08.2005. Therefore in the Review Application the applicants have taken a fresh contention which has not been contended in the Original Application. A Review Application cannot entertain new grounds and through this RA they cannot start questioning the decision of this Tribunal in an earlier OA which was not even the contention of the application in their Original Application. Hence the RA is devoid of any merit. The original applicants who are the respondents in RA No. 07/2017 mainly highlighted the fact that the Review Application by the original respondents has not been filed within the 30 days from the date of receipt of copy of the order. There is no provision for condoning the delay in filing the RA. They have referred to Hon'ble Supreme Court decision in Civil Appeal No. 10941-10942/2013 in the case of New India Assurance Company Vs. Hilli Multipurpose Cold Storage Pvt. Ltd in which it was held that no power lies beyond the statute. They have also mentioned that the applicants had earlier sought 120 days' time beyond the due date to implement the order but instead of implementing the order they have filed the RA. Hence it is a clear case of misuse of procedure of law and breach of trust and hence on this ground the RA should be dismissed.

5. In response to the contention made by the respondents in RA No. 07/2017 the review applicants have filed a rejoinder in which they have stated that the issue of delay has been considered by a Larger Bench of this Tribunal which clearly held that the Tribunal has power to condone the delay in filing the Review Application. The decision has been reported in 2010 SSLJ 1. They have also referred to a judgment of the Hon'ble Apex Court in UOI Vs Satish Kumar reported in 2006 SCC (L&S) 132 where it has been held that by seeking extension of time

to comply with the order of the High Court by itself does not preclude a party aggrieved to question the correctness or otherwise of the order of the High Court and it does not waive his right to file an appeal in the matter. Therefore they submitted that the Review Application may be allowed. They have also filed additional rejoinder in which they have again stated that the decision of the Hon'ble Supreme Court in K. Ajit Babu and Others Vs. Union of India have been discussed the 5 Member Bench decision reported in 2010 1 SLJ (CAT) wherein the Hon'ble Supreme Court held that the principles contained in order 47 CPC should have been extended which clearly indicates that an application for condonation of delay in filing the RA can be filed and entertained. The respondents in the said RA No. 07/2017 have filed an additional reply in which they have referred to another judgment by Principal Bench in RA No. 216/2014 wherein it was held that the Tribunal has no power in condoning the delay in filing the RA. They have also mentioned that the respondents have not provided a copy of the 5 Member Bench decision and hence it is difficult to ascertain the veracity and correctness and applicability.

6. We have heard both sides on the contention made in both the Review Applications. Both the counsel had practically reiterated the submission made in the Review applications and their response thereto as has been highlighted in preceding paras.

7. We have carefully considered both the Review Applications and submission made by both sides. Coming to Review Application No. 05/2017, we note that the Review Applicants had earlier filed a Writ Petition in the Hon'ble High Court of Karnataka against the order dated 22.04.2016 in OA No. 854-863/2013 but sought permission to withdraw the petition with a view to file an RA before the Tribunal. The order dated 22.04.2016 was passed by the Division Bench of the Tribunal

irrespective of who had authored the judgment. If the review applicants were of the view that the Administrative Member should not have authored the judgment, then they should have raised that issue before the Hon'ble High Court rather than withdrawing the Writ Petition and filing a Review Application. This itself speaks of the level of understanding of the learned counsel for the review applicants. As regards the contention made in the Review Application, it does not point out any facts or error apparent on the face of the records in the said order to justify any review. The justifiability of the order passed by this Tribunal dated 17.01.2003 in OA No. 1724 & 1753 to 1775/2001 and order dated 17.08.2005 in OA No. 521/2004, 740 & 760-767/2004 was not the subject matter in the OA and hence the point raised by the review applicants in this respect is totally irrelevant. In the OA 854-863/2013 the applicants agitated against the impugned order dated 28.08.2013 passed by the Chief Commissioner of Income Tax, Bangalore and on detailed consideration the Tribunal in its order dated 22.04.2016 considered the merits of the said order and upheld the same. The review applicants in OA No. 05/2017 have not brought out any specific aspect of the order which appears as an error and would justify a review of the order dated 22.04.2016. Hence according to us, the contention of the review applicants does not merit any consideration.

8. In case of RA No. 07/2017, the respondents therein have practically referred to delay and referred to various judgments in this regard saying that the delay cannot be condoned and hence the RA should be dismissed on this ground alone. We have considered the issue of delay in this matter and, on detailed consideration of the submission made by respondents, we condone the delay and take up the Review Application on merit. The main points highlighted by the review applicants is that when the order dated 28.08.2013 have been upheld by this Tribunal the protection given to the present applicants who were sought to be

demoted is not justified and hence this aspect need to be reviewed. They have also referred to provisions of FR 31 A and stated that the number of officers drawing the pay in a particular cadre will be more than sanctioned strength of the cadre. In the order dated 22.04.2016 para 25 and 26 of the order discussed in detail the issue of reversion of the applicants from the cadre Income Tax Officer to the cadre of Income Tax Inspector and why there is need for protecting their salary as well as service as Income Tax Officer. It was also noted that of the 25 officers whose promotion was withdrawn based on a review DPC and were proposed for reversion, 2 persons had already passed away and all the 23 officers have been promoted as Income Tax Officers though from a later date. Since the applicants are already functioning as Income Tax Officers at present, the issue of more person drawing pay in the cadre would not arise. The said applicants had already drawn salary during their functioning as Income Tax Officers. Hence the point relating to salary raised in the Review Application is not relevant. The review applicants have not raised any contradiction or anything wrong in the view taken by the Tribunal in para 25 and 26 of the order pertaining to the issue. The Tribunal had considered the matter in totality and proper perspective and took a considered view regarding protection of the pay and services of the applicants as Income Tax Officer from the date of their initial promotion. Therefore we do not agree that there is any error apparent on the face of records that would necessitate a review of the order dated 22.04.2016 passed by the Tribunal in OA No. 854-863/2013.

9. Therefore in consideration of facts and circumstances highlighted in the earlier paras, we are of the view that both the Review Applications lacks merit and are liable to be dismissed. Accordingly both RA No. 05/2017 and RA No. 07/2017 stands dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicants in RA No. 170/00005/2017

Annexure-RA1: Copy of the order of CAT, Bangalore Bench dated 22.04.2016 in OA No. 854-863/2013

Annexure-RA2: Copy of the order of Hon'ble High Court dated 29.11.2016 in WP No. 42763/2016

Annexures referred in Reply Statement

Annexure-R1: Copy of order of the Hon'ble High Court of Delhi dated 22.12.2010 in WP (C) 4928/2010

Annexures referred to by the applicants in RA No. 170/00007/2017

Annexure-RA1: Copy of the order of CAT, Bangalore Bench dated 22.04.2016 in OA No. 854-863/2013

Annexures referred in Reply Statement

Nil

Annexures referred in Rejoinder

Nil

Annexures referred in Additional Rejoinder

Nil

Annexures referred in Additional Reply

Annexure-RA1: Copy of Hon'ble Supreme Court decision dated 25.07.1997 in K. Ajit Babu and Others Vs. Union of India and others

Annexure-RA2: Copy of CAT, Principal Bench order dated 27.11.2014 in RA No. 216/2014

Annexure-RA3: Copy of CAT, Lucknow Bench order dated 02.03.2016 in RA No. 332/00006/2016

Annexure-RA4: Copy of Hon'ble Supreme Court decision dated 04.12.2015 in Civil Appeal No. 10941-10942/2013

Annexure-RA5: Copy of Income Tax Appellate Tribunal Mumbai order dated 25.04.2017 in the case of Deputy Commissioner of Income Tax.

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