

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH
(CIRCUIT COURT: JAMMU)

R.A.No.061/00004/2016
IN/AND
O.A.NO.461/JK/2013
AND
O.A.NO.061/00027/2015

(Orders reserved on: 19.7.2018)
Orders pronounced on: 31.07.2018

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Gopal Dass, age 52 years, T.No. 3396, Boot Repairer, H.S. No. II, S/o
Sh. Julfu Ram, 1 FOD 4 Sub Depot, C/o 56 APO.

Applicant

By: Mr. Anil Mahajan, Advocate.

Versus

1. Union of India through its Secretary to Govt., Ministry of Defence, New Delhi.
2. Director General of Ordinance, MGO Branch, Ministry of Defence (Army), New Delhi.
3. The Major General, Ordinance Branch, Northern Command C/o 56 APO.
4. The Commandant, I FOD C/o 56 APO.

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Respondents

By : Mr. Harshwardhan Gupta, Advocate.

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant had initially filed Original Application (OA) No.461-JK-2013 under section 19 of the Administrative Tribunals Act, 1985, inter-alia, seeking issuance of a direction to the respondents to grant him benefit of second financial up gradation under Assured Career

Progression (ACP) Scheme dated 9.8.1999, w.e.f. 14.10.2007 and release him such amount with interest.

2. The case, in short, projected by the applicant was that he was appointed as Mazdoor on 14.10.1983 and on passing of a trade test, he was promoted as Boot Repairer w.e.f. 4.9.1993 and then he also passed Trade Test for next promotional post of Grade-II, Charge man, in the pay scale of Rs.5000-8000. However, he was not promoted to the said post. Meanwhile, ACP Scheme was introduced on 9.8.1999, providing for grant of two financial up-gradations on completion of 12/24 years of service, if one does not get any promotion. His claim was that he became entitled to 2nd financial up-gradation in the pay scale of Rs.5000-8000 (Charge-man, Grade-II) w.e.f. 14.10.2007. Meanwhile, cadre restructuring took place in August, 2008, as under :-

Skilled category	45%
Highly Skilled Grade-II and Highly Skilled Grade-I	55%
Out of Highly Skilled Grade 25% posts were for grade of Master Craftsmen	

The claim of the applicant was that said restructuring would not have any effect on his claim for 2nd ACP which became due to him on 14.10.2007, though applicant was placed in Highly Skilled Grade II w.e.f. 30.11.2009. He submitted a representation dated 23.2.2013 for grant of 2nd MACP in pay scale of Rs.5000-8000, which was rejected vide order dated 19.3.2013 as conveyed vide letter dated 28.3.2013 (Annexure P-3).

3. The respondents had contested the O.A. pleading that as per the Policy decision dated 14.3.2011, the grade structure in the Industrial as

well as nonindustrial trade, the pay scale of the Artisan Staff was modified w.e.f. 1.1.2006, as under :-

Sr.No.	Grade	Pay Band	Grade Pay
I	Skilled	PB-1, Rs.5200- 20200	Rs.1900
II.	Highly Skilled Gde- II	PB-1, Rs.5200- 20,200	Rs.2400
III.	Highly Skilled Gde- I	PB-1, Rs.5200- 20,200	Rs.2800
IV.	Master Craftsman	PB-2, Rs.9300- 34,800	Rs.4200

The letter *ibid* also clarified that Master Crafts, in receipt of grade pay prior to 1.1.2006, will be directly placed to the same grade in grade pay of Rs.4200/-, whereas applicant was serving as Boot Repairer (HS-II) and was granted benefit under ACP Scheme in the pay scale of Rs.4000-6000 (Rs.5200-20,200 + GP Rs.2400/-).

4. The O.A. of the applicant was allowed vide order dated 5.3.2014, on the premise that "the promotional post for the applicant was that of charge man, the pay scale of which was Rs.5000-8000 in October, 2007, much prior to cadre restructuring" and subsequent even cannot take away existing right to get 2nd ACP in higher pay scale of promotional post, and as such the respondents were directed to consider his case for grant of 2nd ACP w.e.f. 14.10.2007 in terms of the basic scheme, with all the consequential benefits.

5. The respondents filed two M.As for extension of time to implement the decision of this Tribunal and 2nd application was rejected vide order dated 16.10.2014. The applicant filed C.P. No. 061/00002/2015 for non compliance of the order dated 5.3.2014. Ultimately vide order dated 15.1.2015, the claim of the applicant was once again rejected by the respondents, on the premises that he did not

fall in feeder cadre for promotion to the post of Charge-man and was a skilled employee in Industrial trade for which the next post is Highly Skilled (Pay Scale Rs.4000-6000), in terms of letter dated 20.5.2003 and as such he was granted that scale w.e.f. 14.10.2007, as revised to Grade Pay of Rs.2400/-. Thus, C.P. was also dismissed on 3.3.2015.

6. The aforesaid letter has been impugned by the applicant in a fresh **O.A.No.061/00027/2015** titled **Gopal Dass Vs Union of India & Others**, on the ground that the respondents cannot go against the findings recorded by this Tribunal that for the applicant, next promotional post was Charge man and as such he was to be granted 2nd financial up gradation in the pay scale of Rs.5000-8000 (Grade Pay of Rs.4200/-).

7. Meanwhile, the respondents have moved Review Application No. 61/00004/2016 for review of the order dated 5.3.2014 along with an application for condonation of delay in filing the R.A. The review plea has been made on the short ground that applicant was a Skilled Tradesman, which is not a feeder grade for promotion to the post of Charge man Grade II. The next promotional grade for Skilled employee is Highly Skilled in pay scale of Rs.4000-6000, as is apparent from Restructuring Scheme dated 20.5.2003. As per Army Headquarters letter dated 22.5.2004, all Industrial Group C and D employees are eligible for financial up gradation under ACP Scheme in the hierarchy, as mentioned below :-

(i)	Unskilled	Rs.2550-3200
(ii)	Semi Skilled	Rs.2650-4000
(iii)	Skilled	Rs.3050-4590
(iv)	Highly Skilled	Rs.4000-6000
(v)	Chargeman	Rs.4500-7000 (now Rs.5000-8000)
(vi)	Senior Charge man	Rs.5000-8000

It is submitted that since the applicant was promoted to the post of Boot Repairer (Skilled) from Mazdoor (Unskilled), in pay scale of Rs.3050-4590, under ACP Scheme, he was entitled to and was rightly given Highly Skilled Grade pay of Rs.4000-6000, now Rs.5200-20200 plus Grade pay of Rs.2400, which is in order. Secondly, it is submitted that post of Charge man Grade II is a Technical Supervisory post government by Recruitment Rules known as SRO 15/2006, which came into force w.e.f. 4.2.2006, when same were notified in Official Gazette in supersession of erstwhile Army Ordnance Corps (Technical Supervisory Posts) Recruitment Rules, 1980. As per new rules, 66.67% posts are to be filled by promotion of Highly Skilled Tradesman with 8 years of service, who have passed trade dispute. Since applicant does not fall in feeder category, so an error has occurred in recording a finding that the post of Charge man was a promotional post for the applicant prior to restructuring of the cadre and as such order may be reviewed.

8. In the M.A. for condonation of delay, the sequence of events of case starting from disposal of the O.A. to the passing of speaking order etc. have been given. It is also pleaded that in subsequent O.A.No.061/00027/2015, this Tribunal allowed the respondents a liberty to file a Review Application against the orders dated 5.3.2014 and thus, the decision to file the R.A. was taken and as such delay in filing the R.A. may be condoned.

9. On the other hand, applicant in O.A. filed a reply to R.A. and M.A. for condonation of delay. It is pleaded that filing of both the pleas is nothing but abuse of process of law. The speaking order is not in conformity with the order dated 5.3.2014, passed by this Tribunal. Even if liberty was granted for filing R.A., it would always be subject to

just exceptions. The R.A. is barred by time and may be rejected on this ground itself. Delay of each day has not been explained by the respondents. On merit, it is pleaded that review of the order cannot be claimed on merits of the case. If respondents have any problem, they can approach a higher court of law and finding recorded by this Tribunal cannot be recalled in a review plea. Moreover, the applicant had qualified the trade test for promotion to the post of Charge man Grade II, meaning thereby, he fell within the feeder cadre for promotion to the said post, much prior to issuance of new Rules in 2006.

9. We have heard the learned counsel for the parties at substantial length and examined the material on file.

10. Considering the fact that the respondents themselves prayed and were allowed to file an application for review of the order of this Tribunal with application for condonation of delay, on 3.2.2016 and most of the time the matter has remained pending either under Contempt Proceedings or Extension of Time and then filing of a new Original Application and to secure ends of justice, we are inclined to allow this M.A. In **STATE OF HARYANA V. CHANDRA MANI & ORS.**

1996 (3) SCC 132, the Hon'ble Supreme Court observed as under:

"11. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on [the] table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected

but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.'

(9) This Hon'ble Court in *Union of India v. Jain and Associates* decided on 6-2-2001 has held that delay ought to be condoned when sufficiently explained particularly where party seeking condonation is the Government....."

11. Similarly in the case of **O.P. KATHPALIAA V. LAKHMIR SINGH (DEAD) & ORS.** [(1984) 4 SCC 66], Hon'ble Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In **COLLECTOR, LAND ACQUISITION, ANANTRAG & ANR. V. MST. KATIJI & ORS.** [(1987) 2 SCC 107], a Hon'ble Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause is adequately elastic to enable the court to apply the law in a meaningful manner which sub serves the ends of the justice-that being the life-purpose for the existence of the institution of courts. It is thus, more than clear that the Hon'ble Supreme Court acknowledged the slow pace with which files move in Government departments and expressed that certain amount of latitude is permissible while examining the Government's explanation for delay because a rigid approach may defeat public interest. Considering the peculiar facts of this case, the M.A for condonation of delay is allowed and we proceed to decide the Review Application on merits.

12. The learned counsel for the applicant argued with great vehemence, that the findings recorded by this Tribunal cannot be

questioned in a Review Application and if respondents have any grievance, they can challenge it in Hon'ble High Court only which is opposed by learned counsel for the review applicants.

13. The first question regarding the power of review has to be considered in view of the provisions of Order 47, Rule 1 of the Code which reads as under:-

"1. Application for review of judgment.-

(1) Any person considering himself aggrieved;-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

b) by a decree or order from which no appeal is allowed, or

c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or other made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation; The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

A perusal of the extraction shows that a review can be filed on the grounds that if there is a (a) 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 decree was passed or order made, or (b) on account of some mistake or error apparent on the face of the record or (c) for any other sufficient reason. The learned counsel for the review applicants pleaded that

respondents could not produce or enclosed the recruitment rules in reply to the O.A. despite due diligence and had it been there, the finding qua promotional post of applicant as Charge man, could not be returned by this Tribunal. Thus, the review plea raised by respondents could fall within clause a referred to above. Even under clause (c), review can be sought for any other sufficient cause also. Thus, he submitted that the review application is fully maintainable. On the other hand, learned counsel for applicant in O.A. pleads, time and again, that review cannot be sought to upset a finding recorded by this Tribunal, even if that is based on wrong premises.

14. Learned counsel for the applicant in O.A. has cited number of judgments in support of his plea that a finding recorded by a court of law cannot be reviewed. When it was pointed out to him that one or two judgments on issue would be sufficient, he was adamant that the citations produced by him may be noticed in the order. To satisfy his eagerness, we notice the decisions relied upon by him as under:-

- (i) Chidambaram Pillai vs. Madhavi Amma (Kerala), 1988 (2) KLT, 427
- (ii) Parijan Bibi v. Jan Mohammad, 1992 (1) Cal., H.C.N. 410, by Calcutta High Court.
- (iii) Govind Prasad vs. Karobar Lahrimal Ramjeevan & Another, 2000 AIHC 1569 by Hon'ble Rajasthan High Court.
- (iv) Santi Kumar Jain vs. Anil Kumar Datta, 1996 AIR (Calcutta) 4: 1996(2) ICC 642 – Hon'ble Calcutta High Court.
- (v) S. Khamruddin (Deceased) by LR vs. N. Tahir Ahmed & Others, 2001 (1) CCC 192 (Kar), by Hon'ble Karnataka High Court.
- (vi) Chandmall Chopra vs. State of West Bengal, 1986 CriLJ 190, by Hon'ble Calcutta High Court.

- (vii) Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma, 1979 AIR (SC) 1047.
- (viii) Lily Thomas Vs Union of India, 2000 (5) JT 617 by Hon'ble Supreme Court of India.
- (ix) Managing Director, Hindustan Photo Films Co. Ltd. & Another Vs. H.B. Vinobha & Others, AIR 1998 Madras 358
- (x) Smt. Mayo Dolo Vs. VijoyTachang & Others, 2012 (1) CCC 206 (Gau.), by Hon'ble Guwahati High Court
- (xi) Northern India Caterers India Limited Vs. Lt. Governor of Delhi, 1980 AIR (SC) 674;
- (xii) Promoters & Builders Association of Pune Vs. Pune Municipal Corporation & Ors, 2007 AIR (SC) 1956.
- (xiii) A. A. Enterprises, Bangalore Vs. Tektronix (India) Pvt. Ltd. 2012 (4) CCC 442 (Karnt.) by Hon'ble Karnataka High Court.
- (xiv) Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavanapa Tirumale, 1960 (1)SCR 890.
- (xv) Haridas Das Vs. Usha Rani Banik and Others, 2006 AIR (SC) 1634,
- (xvi) Harinagar Sugar Mills Limited Vs. State of Bihar & Others, (2006) 1 SCC 509,
- (xvii) Kamlesh Verma Vs. Mayawati & Others, 2013 (10) Scale 113,
- (xviii) Jain Studios Ltd. Through its President Vs. Shin Satellite Public Co. Ltd. 2006 AIR (SC) 2686.
- (xix) State of Rajasthan & Another Vs. Surendra Mohnot & others, 2015 (1) RSJ 511.
- (xx) Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. S. K. Roy, The Chairman, Life Insurance Corporation of India & Another, C.P © No. 459 of 2015 in C.A No. 6950 of 2009 decided on 9.8.2016.

15. The sum total of legal issues settled in the aforementioned cases is that 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 of 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. Basically, the parameters laid down in order 47 rule 1 CPC have been explained in these decisions by Hon'ble Supreme Court and Hon'ble High Courts. It has been held that review can be allowed on the grounds of 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. Thus, it rather goes in favour of the respondents (review applicants). There are no hard and fast rules and each case has to be examined on its own merits. Considering the peculiar facts of this case, where the recruitment rules of 2006 were not produced before the court, despite due diligence, by the respondents / review applicants, resulting into an error apparent on record that post of applicant was in feeder cadre for promotion to the post of Charge man, which is not so, thus, we find that sufficient grounds have been made out for review of the order in question and the objections raised by the applicant are hereby rejected.

16. We do not find any merit in the plea of the applicant in the O.A. and are of the view that sufficient grounds are made out for review of the order by the respondents, as it is now admitted fact that the promotional post of Charge man was not for the category of applicant, in view of the specific position under the 2006 rules and as such finding recorded to the contrary is not according to facts based on documentation. In that view of the matter, the R.A. is allowed and the O.A. is restored to its Original position.

17. Now, with the consent of both sides, we have heard the learned counsel for the parties on merits as well and proceed to decide both these Original Applications, by this common order, as facts and point of law involved are common.

18. It is not a matter of dispute from the material available on record and the arguments addressed by learned counsel for the parties that applicant was a Skilled Tradesman and this post is not a feeder grade for promotion to the post of Charge man Grade II. The post of Charge man Grade II is a Technical Supervisory post governed by Recruitment Rules called SRO 15/2006, which came into force w.e.f. 4.2.2006 on notification in the Official Gazette. These were issued in supersession of earlier rules known as Army Ordnance Corps (Technical Supervisory Posts) Recruitment Rules, 1980. As per new recruitment rules, 66.67% of the posts are to be filled by promotion of Highly Skilled Tradesmen with 8 years of service, who have passed trade test. Even the applicant has pleaded in reply to R.A. that at least prior to 2006 Rules, the applicant was eligible under the old rules for promotion as Charge man. If that be so, then in 2007, the applicant was not in feeder cadre for promotion as per new rules. Thus, he cannot be granted benefit of 2nd financial up gradation due to him in 2007, on the basis of pay scale

of higher post of Charge man, to which post he became ineligible in 2006 itself, as per his own pleadings. On the other hand, we find merit in the pleas taken by respondents that the next promotional grade for Skilled employee is Highly Skilled in pay scale of Rs.4000-6000, as is apparent from Restructuring Scheme dated 20.5.2003 and as per Army Headquarters letter dated 22.5.2004, the Industrial Group C and D employees are eligible for financial up-gradation under ACP Scheme in the hierarchy given there-under. Admittedly, the applicant was promoted to the post of Boot Repairer (Skilled) from Mazdoor (Unskilled), in pay scale of Rs.3050-4590. Under ACP Scheme, he was naturally entitled and given the Highly Skilled Grade pay of Rs.4000-6000 (Rs.5200-20200+2400). In view of these facts, we do not find any merit in the plea taken by the applicant that he is entitled to 2nd MACP in a higher pay scale for the post of Charge man Grade II.

19. In the light of the aforesaid reasons, both the Original Applications lack any merit and are accordingly dismissed. However, the parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh.
Dated: 31.07.2018

HC*