

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**R. A. No. 122016**

**Cuttack, this the 23<sup>rd</sup> day of March, 2017**

**CORAM**

**HON'BLE MR. R. C. MISRA, MEMBER (A)**

.....

**In the matter of Union of India Represented through**

1. Secretary, Govt. of India, Ministry of Communications and Information Technology, 42, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. The Chairman cum Managing Director, Bharat Sanchar Nigam Limited, H C Mathur Lane, New Delhi.
3. The Chief General Manager, BSNL, Odisha Circle, Bhubaneswar-751009.
4. The General Manager Telecom District, BSNL, Sambalpur, At/PO/Dist-Sambalpur.
5. The Executive Engineer(Civil) BSNL Civil Division, D.T.O Building, 4<sup>th</sup> Floor, Kacheri Road, Sambalpur-768001.

.....Applicants /Respondents

By the Advocate- (M/s. K.C. Kanungo, S. Behera)

**-VERSUS-**

Sri Surendra Prasad, S/o Late Shyam Bihari Prasad At/Ainthapali, PO-Budharaja, Sambalpur.

The humble Application of the above named Applicants/Respondents;  
(BSNL)

... ..Respondents/ Applicant

By the Advocate- (Mr. Satyajit Behera)

**ORDER**

**R.C. MISRA, MEMBER(A):**

This review application has been filed by the authorities of BSNL, Respondent No.2 in the Original Application in OA No. 122/2015, praying for a review of the order dated 29.04.2016 passed by the Tribunal in the said OA, under the provision of Section 22(f) of the AT Act read along with Rule-17 of the CAT (Procedure) Rules, 1987.

2. Rule 17(1) of the CAT (Procedure) Rules lays down that no application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed. The present R.A was filed on 19.05.2016, seeking review order of the Tribunal in O.A.122/2015, Passed on 29.04.2016, and therefore has been filed within the time limit prescribed under the Rule.

3. Rule17(3) provides that “unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party. In case of the present RA, on the prayer made by the review applicants No.2, 3, 4 and 5 (BSNL) the copy of the RA was handed over to Ld. Counsel for applicant in the OA and the review respondent asking him to file show cause as to why the RA will not be allowed, and order dated 29.04.2016 of the Tribunal will not be modified. The applicant in the O.A (Review respondent) has filed his objection to the review application, and the matter was heard on 10.03.2017 and reserved for order.

4. The Ld. Counsel for review applicant submitted that there exist errors and legal lapses apparent on the face of the record in respect of order dated 29.04.2016 on the basis of which a review has been prayed for. The grounds agitated are as under.

(a) In O.A No.122/2015, the Tribunal decided the matter basing upon the ratio of judgment of the Hon’ble Apex Court in the case of CANARA BANK and another Vs. M. Mahesh Kumar (CA 260 of 2008, and accordingly directed respondents to reconsider the case of the applicant in the O.A as per the Scheme prevailing in the year 2002. In an earlier O.A bearing No. 964/2013 it was decided that rules and guidelines in force at the time of consideration by CHPC would be applicable, based upon the judgment of the Hon’ble Apex Court in the case of MGB Gramin Bank Vs. Chakrawarti Singh. Therefore, as a matter of Judicial discipline, the Bench should have referred the matter to a larger full Bench, for a final view.

(b) In a plethora of Judgments, the Hon'ble Apex Court has laid down the law that the rule in force at the time of considerations of the case for compassionate appointment, particularly when the vacancies exist, shall govern the filed. In the present case although the death of the deceased employees was in 2001 and the application was preferred in 2003, there was no vacancy till the year 2010, and therefore the ratio of judgement of the Hon'ble Apex Court would not apply to the facts of the present case.

(c) The facts of the Canara Bank case are that the Scheme of compassionate appointment was in vogue in 1993, whereas the scheme introduced in 2005 was for payment of ex-gratia. But in the present case, the same Scheme of compassionate appointment is continuing. On the other hand, the scheme of 1998 introduced by Deptt. of Personnel & Training has been only revised by introducing a weightage point system in order to do a fair assessments of the cases of compassionate appointment. The applicant was for the first time considered for compassionate appointment under the revised scheme of 2007. Therefore, the judgment of the Hon'ble Apex Court in the Canara Bank case is based upon the facts of that case, and cannot be applied to the present case which has a different set of facts.

(d) The order of the Tribunal suffers from apparent and glaring errors, and therefore is a fit case for review.

The review respondents/ the applicants of the OA have filed their objection petition.

5. On a perusal of the orders passed in OA No.122/2015, I find that the matter was decided on the basis of the judgment of the Hon'ble Apex Court dated 15.05.2015 in the case of Canara Bank and another Vs. M.

Mahesh Kumar which was brought to the notice of the Tribunal. In the said case, in Para 24 of the order the appellant Bank was directed to consider the case of the respondents for compassionate appointment as per the scheme which was in vogue at the time of death of the employee concerned. It was observed that the facts of the Gramin Bank case and the facts of the Canara Bank case decided by the Hon'ble Apex Court were similar. In the Gramin Bank case, the Hon'ble Apex Court had directed that the case should be considered strictly according to the new scheme. The Gramin Bank case was decided on 07.08.2013 and the Canara Bank case was decided on 15.05.2015. The view taken by the Tribunal was that since the Canara Bank judgment came later, it will take precedence over the earlier judgment. When the Tribunal decided the matter in O.A No. 946 of 2013, the judgment of the Hon'ble Apex Court in Canara Bank case was not brought to the notice of the Tribunal, and therefore that matter was decided basing upon the ratio of Gramin Bank case.

6. What is also important is that the submission of the review applicant was made in a similar vein during the hearing of the O.A. The difference in facts has also been pointed out, to drive home of the point that ratio of Canara Bank decision would not apply to the present case. All the submissions have been considered and addressed in the order in the O.A. After a process of adjudication, the Tribunal has reached a conclusion that the ratio of decision in Canara bank case would be applicable to the present case. It has been observed that the decision of the Hon'ble Apex Court of 15.05.2015 in the case of Canara Bank Vs. Mahesh Kumar having been brought to the notice of the Tribunal now, the same can not be ignored, and

would now be taken as binding upon the Tribunal dispute the fact that in O.A. No.946 of 2013, a different view was taken based upon the ratio of decision in the MGB Gramin Bank case. That all the issues as raised in the review petition now were considered before the Tribunal reached a conclusion in the matter would be self-evident from the paras 17 to 20 of the order in the O.A. which are quoted below:

“17. The learned counsel for the applicant has relied upon the judgment of the Hon’ble Apex Court dated 15.05.2015(Which is after the decision in MGB Gramin Bank case disposed of on 07.08.2013) in the case of Canara Bank and another Vs. M. Mahesh Kumar(C.A.No.260 of 2008) decided along with C. A. No. 266 of 2008 and C.A. No. 267 of 2008. The facts of this case are similar to the facts involved in the M. G. B. Gramin Bank case. As per a new scheme that the Indian Banks Association formulated, ex-gratia payment in lieu of compassionate appointment was introduced by issue of H.O. Circular No. 35 of 2005 dated 14.02.2005. The contention of the Bank was that as on the date of consideration of the application for compassionate appointment, there was no policy to provide compassionate appointment under “Dying in Harness Scheme”. The main question falling for consideration was whether the scheme passed in 2005 providing for ex-gratia payment or the scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. The Hon’ble Apex Court after considering the matter came to the following final conclusion.

“Para-22. Considering the scope of the scheme. “Dying in Harness Scheme, 1993”, then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference”.

“Para-24. In the result, all the appeals preferred by the appellant Bank are dismissed, and the appellant Bank is directed to consider the case of the respondent for compassionate appointment as per the scheme which was in vogue at the time of death of the employee concerned. In the facts and circumstances of the case, we make no order as to costs”.

18. The argument placed by the learned counsel for respondents is that the Hon'ble Apex Court judgment in C.A No. 250 of 2008(MD, Canara Bank & Ors. Vs. M. Mahesh Kumar, cited by the applicant stands distinguished from the present case in terms of the facts. The issue was about compassionate appointment as per the 1993 scheme as against the new scheme of ex-gratia payment of 2005. However, as already elucidated, in the MGB Gramin Bank case also, the facts were similar. Clause 14 of the new scheme effective from 2006 provided that all applications pending on the date of commencement of scheme shall be considered for appointment of ex-gratia instead of compassionate appointment. The Hon'ble Apex Court directed that the case should be considered strictly according to Clause 14 of the new scheme. Therefore, facts of the case in MGB Gramin Bank case, and Canara Bank case decided on 7<sup>th</sup> August, 2013 and 15<sup>th</sup> May, 2015, are similar. In the first case, the Hon'ble Apex Court held the view that scheme as on the date of consideration should be made applicable, and in the second case the decision was that the scheme that was effective at the time when cause of action arose would be applicable. The judgment dated 15<sup>th</sup> May, 2015 in the Canara Bank case has come later, and in my view, would take precedence over the earlier case.

19. The facts involved in both the decisions of the Hon'ble Apex Court are similar. In the present O.A., of course, the issue is whether scheme of 2007 or the scheme that was effective on the date of submission of application for compassionate appointment would be applicable. Similar matter in O.A.No.946 of 2013 was disposed of on 15.06.2015. In that order, the Tribunal did not find anything wrong or irregular with the fact that 2007 guidelines were applied while considering the case of the applicant for compassionate appointment. Accordingly, the case was dismissed. However, this decision was arrived at basing upon the ratio of the MGB Gramin Bank case decided by the Hon'ble Apex Court. The decision of the Canara bank case rendered by the Hon'ble Apex Court on a later date, was not within the knowledge of the Tribunal, and was not brought to its notice. In the present case, however, the learned counsel for applicant has placed that decision before the Tribunal, urging that this being the latest decision should be binding.

20. The learned counsel for respondents has urged that precedents cannot be relied upon in a mechanical manner, and that a little difference in facts can also make a material difference. He cited the decisions in Commissioner Income Tax Vs. Sun Engineering Works, AIR 1993 SC 43, Bhawnagar University Vs. Palitana Sugar Mill, AIR 2003 SC 511 and Union of India Vs. Chajju Ram, AIR 2003 SC, 2339 in this

regard. He has also pleaded that the Hon'ble Supreme Court's judgment in the CANARA Bank case stands distinguished, and the ratio of judgment of that case should not apply to present O. A. because of a different set of facts. There is no doubt a small difference, because the scheme of ex-gratia payment as against the scheme of compassionate appointment is not the issue in this case. The issue is regarding the scheme of compassionate appointment at the time of cause of action and the scheme of compassionate appointment of 2007 in which BSNL adopted the weightage point system. But the facts in the MGB Bank case decided in 2013 and those in the Canara Bank case decided by the Hon'ble Apex Court in 2015 are similar. I have to come to the ratio of decision of the Hon'ble Apex Court in the later case which is that the case of an applicant for compassionate appointment has to be considered under the scheme which was prevalent at the time of submission of the application for compassionate appointment, and not under the scheme that was existing at the time of consideration. The ratio decided in the Canara Bank case by the Hon'ble Apex Court is that the relevant scheme to be applicable is the one that was effective at the time of cause of action. If there is a change in the scheme, or there is a different scheme at a later point of time, when actual consideration of the applicant is made, such consideration has to be made as per the scheme that was effective when cause of action arose. The decision of the Hon'ble Apex Court in May, 15, 2015 in the case of Canara Bank Vs. Mahesh Kumar having been brought to the notice of the Tribunal now, the same cannot be ignored, and would now be taken as binding upon the Tribunal, despite the fact that in O.A. No.946 of 2013, involving similar facts a different view was taken based upon the ratio of decision of the Hon'ble Apex Court in MGB Gramin Bank case."

7. I would now come to the most vital issue of this review application, i.e., what is the scope of this review as envisaged under law. The settled position in this regard is that review will be entertained only when a mistake or error apparent on the face of the record is established. A review application shall not be tantamount to a re-hearing or re-adjudication of the case. A review can not be used as an appeal in disguise, which means that decisions consciously arrived at after a due process of adjudication can not be again challenged, as can be done before an appellate forum. If a particular

judicial forum has decided the matter, it can not start a fresh process of hearing on the same facts and issues under a review. In fact, such fresh adjudication will be instantly hit by the principle of res-judicata. The Hon'ble Apex Court in the case of Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma (1979) 4 SCC 389-AIR 1979 SC 1047 decided that there are definite limits to the exercise of power of review. The Hon'ble Apex Court in the same judgment specifically observed that the power of review given to Courts may not be exercised on the ground that the decision was erroneous on merits; that would be the province of a Court of appeal". In the case of Parsion Devi and Ors Vs. Sumitri Devi & Ors. (1997) 8 SCC 715, the Hon'ble Apex Court has also laid down the law that "a review petition, it must be remembered, has a limited purpose and can not be allowed to be an appeal in disguise."

8. The Ld. Counsel for review applicant submits "error apparent on the face of the record " as one of the grounds of review. But after minutely scrutinizing the order in the O.A. I unhesitatingly hold that there is no error apparent on the face of the record. On the other hand, the submission is more in the line of pointing out that the order of the Tribunal is erroneous. The issues highlighted now were also raised during adjudication of the O.A. and were all taken into account while reaching the conclusion. The review applicant in fact submits that the Tribunal should have taken a different view. A different view is perhaps possible. But such a line of argument is sustainable only in an appellate forum, and not in a review petition. This review petition, in my view, is an "appeal in disguise", and



therefore I am not inclined to hold that this would fall within the scope of power of review conferred on this Tribunal.

9. On the basis of the detailed discussion in the foregoing paragraphs I do not find any merit in the review application, and accordingly the same is dismissed.

**(R.C.MISRA)**  
**MEMBER(A)**

K.B.



