

(Reserved on 14.11.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
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(THIS THE 20<sup>th</sup> DAY of December, 2018)

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)**  
**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)**

Civil Misc. Review Application No. 330/00009/2013  
**In**  
**Original Application No. 330/00015/2007.**

Budhi Ram, S/o Shri Mhanand, Aged about 56 years, R/o Village Samari, Post – Besara Bazar, District - Mirzapur.

.....applicant

**V E R S U S**

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
2. The Divisional Railway Manager, North Central Railway, DRM Office, Allahabad.
3. The Sr. Personnel Officer, North Central Railway, Allahabad.
4. The Head Mistress, Railway Mixed Primary School, North Central Railway, Tundla. ....Respondents

**Advocate for the Applicant :- Shri S.S. Sharma**  
**Advocate for the Respondents:- Shri A. Tripathi (absent)**

**O R D E R**  
**( Delivered by Hon'ble Mr. Gokul Chandra Pati, AM)**

The instant Review Application is directed against the order dated 10.04.2012 (Annexure RA-1) passed by this Tribunal in OA No. 15/2007 (Budhi Ram Vs. U.O.I. & Ors) and it is filed by the applicant in the OA.

2. The facts, in brief, are that the applicant filed OA No. 15/2007 against non-fixation of correct pay scale of Rs. 2650-4000 in alternative employment on being declared medically incapacitated by the Medical Board for the post of Gangman in pay scale of Rs. 2650-4000/-. It is stated that on being declared medically incapacitated, the applicant vide order dated 24.03.1998 was posted as Mali in lower grade Rs. 2550-3200 instead of Rs. 2650-4000/-. The OA was allowed by this Tribunal vide order dated 10.04.2012 with following direction: -

“13. In view of the observation made above, the impugned order dated 24.03.1998 is set aside to the effect of fixation of pay of the applicant in the lower grade. Respondents are directed to grant pay scale of Rs. 775-1025 / 2650-4000

(RPS) to the applicant with effect from the date when the applicant was absorbed on the post of Mali with all consequential benefits. However, it is made clear that the applicant will not be entitled for any arrears of pay.”.

However, the applicant is still aggrieved since the arrear of pay was not allowed by the Tribunal.

3. There is a delay of about eleven months in filing Review Application, which is filed with M.A. No. 1416/2013 for condonation of delay on the ground that the applicant is an illiterate person, he could not take steps in time to file the Review Application for arrear of pay due to extreme cold weather and uncertainty of rains.

4. We have heard learned counsel for the applicant and perused the material on record. Admittedly, the present Review Application is filed beyond 30 days from the date of receipt of the impugned order as required under rule 17 of the CAT (Procedure) Rules, 1987, which states as under:-

“17. Application for review – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of a copy of the order sought to be reviewed.”

From above rule, the Review Application filed beyond 30 days will not be maintainable in terms of the aforesaid rule 17.

5. In the case of **K. Ajit Babu Vs. Union of India – 1997 (6) SCC 473 (Para 4)**, while examining the provisions of Section 22(3)(f) of the AT Act and the Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, Hon’ble Apex Court held that the right of review is available to the aggrieved person on restricted ground as mentioned in the Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came before the Full Bench of Hon’ble Andhra Pradesh High Court in the case of **G. Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others – 2005(4) SLR 720** and it was held that the Tribunal will not have jurisdiction to condone the delay under the Limitation Act. In this case, this Review Application was filed on 18.01.2017 impugning the order dated 21.01.2014 of this Tribunal. Even if we consider the limitation period from the date of dismissal of writ petition by the Hon’ble High Court.

6. It is seen that there is delay of more than eleven months and the reason mentioned in the Misc. delay condonation application No. 1416/2013 are not found satisfactory.

7. For the reasons stated above, we do not find the reasons furnished in the application for delay condonation to be adequate enough to consider condonation of delay, which is also not permissible as per law in view of case laws discussed above.

8. Regarding merit, it is seen that the review application has been filed on 22.03.2013 mainly on following grounds: -

i. As per para 1313 of Chapter XIII of Indian Railway Establishment Manual Vol. I, on absorption in alternative post, the pay of Railway servant decategorized on account of circumstances which did not arise out and in course of employment will be fixed at a stage corresponding the pay previously drawn in the post held by him before decategorization.

ii. The wrong fixation of pay of the applicant was done by the respondents due to the lapses and mistake on their part as scale of Mali was Rs. 775-1025/2650-4000 which is the same pay scale in which the applicant was working on the post of Gangman before his decategorization, therefore, his pay should have been fixed in the pay scale of Mali Rs. 2650-4000 w.e.f. 15.04.1998.

iii. The applicant is also entitled for payment of arrears of pay w.e.f. 15.04.198 to 14.08.2012, which is the date of correct fixation of pay.

iv. The Tribunal while passing the order dated 1004.2012 did not consider para 1313(a) of IREM Vol. I.

v. As per settled law, the applicant is entitled for payment of arrears of pay from 15.04.1998 to 14.08.2012.

9. On merits, Review application to review the order of the Tribunal are considered by the Tribunal under Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC), which states as under:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from 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 order made against him, may apply for a review of judgement to 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 judgement 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 judgement 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 judgement.]”

From above provisions of the Rule 1 of the Order 47, the scope of review by this Tribunal is limited to the grounds of (i) discovery of any new and important facts or evidence which was not within the applicant's knowledge and which, after exercise of due diligence, was not within his knowledge or could not be produced at the time of consideration of the O.A.; or (ii) some mistake or error apparent on the face of the record; or (iii) for any other sufficient reasons. In the case of **Ajit Kumar Rath vs. State of Orissa and Ors – AIR 2000 Supreme Court 85**, it was held by Hon'ble Apex Court as under:-

“The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. 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 or 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 means a reason sufficiently analogous to those specified in the rule.

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set

out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

10. It is noted that this Tribunal, while exercising the power under the section 22 of the Administrative Tribunals Act to review its order cannot function like an appellate forum as per the judgment of Hon’ble Apex Court in catena of cases. . In the case of **State Of West Bengal And Others v. Kamal Sengupta and another - (2008) 8 SCC 612**, Hon’ble Supreme Court after taking into account almost entire case law on review, has held as under:

“ 22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of order 47 rule 1 CPC or section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

11. Hon’ble Supreme Court in **Andhra Pradesh State Road Transport Corporation Vs. Abdul Karim - 2007 (2) Scale page 129** has held that the review application cannot be lightly entertained. It should be entertained only when there are manifest error which crept up in the judgment resulting serious miscarriage of justice.

12. Further, the Review Application cannot be entertained on the grounds which were already considered in the OA. In the case of **Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301**, Hon’ble Supreme Court has held as under:

“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen ..... concluded ..... adjudications.

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47 rule 1 cpc. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.”

13. In this case, the OA was allowed vide the order dated 10.04.2012 allowing the higher pay scale which was claimed by the applicant, but without allowing the arrears of pay. There is no error or mistake apparent on the face of the record which has been pointed out by the applicant in the Review Application against the finding of not allowing the arrears of pay. The grounds mentioned in the Review Application do not include any of the deficiencies specified under rule 1 Order 47 of the CPC in order to justify the review of the impugned order allowing the arrears of pay to the applicant. If the applicant is aggrieved in this regard, he is free to take appropriate steps to agitate the matter in the higher forum. Hence, on merits also, the Review Application is not maintainable.

14. In view of the above, the Review Application is not maintainable on the ground of delay as well as on the ground of merit. Hence, the Review Application, being devoid of merit, is dismissed. No order as to costs.

MEMBER (J)

MEMBER (A)

*Anand...*