CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

RA No. 2 of 2011
(arising out of OA No. 96 of 2008)

Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr.Swarup Kumar Mishra, Judicial Member

Arta Ballav Pradhan, aged about 58 years, S/o Late Bahadoor Pradhan, At- Balanda, PO – Nuabarangamal, Via- Gourpali, Dist- Sambalpur, working as GDSBPM of Nuabaranamal Branch Post Office.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Govt. Of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001..
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. – Khurda.
3. Director, Postal Services, Sambalpur Region, Sambalpur.
4. Superintendent of Post Offices, Sambalpur Division, Sambalpur – 7768001.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.S.Behera, Sr. Counsel

Heard & reserved on : 10.12.2018 Order on : 10.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant for this Review Application (in short RA) has filed this RA, which is directed against the order dated 15.03.2011 of this Tribunal in OA No. 96/2008, by which the OA was dismissed. The RA, filed within the stipulated time, has been filed on the following grounds:-

(i) It is wrongly stated in para 3 of the order that since the applicant was a GDSBPM, he was appointed SAS agent.

(ii) The applicant without submitting the show cause reply and participating in the inquiry, had filed the OA to quash the charge-sheet, which is an error apparent on face of record.

(iii) The punishment order was not issued by virtue of the interim order dated 23.12.2008, although proceedings were already concluded. Hence, the order dated 15.3.2011 was passed on account of some mistakes on the face of record.

(iv) As per the judgment of Hon'ble Apex Court in the case of **Md. Gulam Ghouse & another reported in AIR 2004 SC 1467** in a case with facts similar to the present case, directed Hon'ble High Court to dispose the matter on merit. The impugned order dated 15.3.2011 is an error in law, which is liable to be reviewed.

(v) The judgments of Hon'ble Apex Court relied upon by the Tribunal while passing the impugned order dated 15.3.2011, helped the case of the applicant. Hence, the impugned order is a product of misconception of law and fact.

(vi) As per the judgment of Hon'ble Apex Court in the case of **Board of Cricket Control of India vs. Netaji Cricket Club** reported in AIR 2005 SC 592, it is held that an application for review would be maintainable if there exists sufficient reason therefor. The word sufficient reason in Order-47, Rule-1 is wide enough to include misconception of fact or law by a Court.

2. The facts relating to the case in brief are that the applicant, while working as GDSBPM in Nua Barangamal BO, was also appointed as SAS agent by the district authorities for dealing with Kisan Vikas Patra (in short KVP) scheme. He had allegedly collected Rs. 6000/- for investment in KVP, without crediting the same to Government account and he did not obtain any KVP for delivery to the investor. Accordingly, a charge-sheet dated 16.5.2007 was issued to the applicant under the rules. The applicant had challenged the charge-sheet dated 16.5.2007 in the OA No. 96/2008, mainly on the ground that the allegation against the applicant arose in his capacity as SAS agent, which is outside the purview of his duty as GDSBPM and as per the provisions of the P & T Manual, no charge-sheet could be issued against him. The OA was dismissed by the Tribunal vide the order dated 15.3.2011 and this RA has been filed impugning the order dated 15.3.2011.

3. We have heard learned counsel for the applicant as well as the respondents and perused the pleadings on record. Under the law, review of the order of this Tribunal can be taken up under the Rule-1 Order no 47 of the CPC, which specifies limited grounds for permitting such review. Hon'ble Apex Court in a number of cases has held that the review cannot be resorted to get a different interpretation or decision from what is mentioned in the impugned order. In the case of **Board of Cricket Control of India** (supra), cited by the applicant in the RA, Hon'ble Supreme Court has held as under:-

> "Indisputably, an undertaking had been given by a learned Senior Counsel appearing on behalf of the Board. In the impugned order, the Division Bench before whom such undertaking had been given was of the opinion that it was misled. This Court having regard to the understanding of such undertaking by

the Division Bench does not intend to deal with the effect and purport thereof and as we are of the opinion that the Division Bench of the Madras High Court itself is competent therefor. If paragraph 14 of the order of the learned Single Judge is to be taken into consideration, it is possible to contend that the learned Judges of the High Court were correct.

We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

It is true that in Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulose Athanasius and Others [(1955) 1 SCR 520], this Court made observations as regard limitations in the application of review of its order stating :

> "Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule.", but the said rule is not universal.
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> Yet again in Lily Thomas (supra), this Court has laid down the law in the following terms:
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> "52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact

> did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error." (Emphasis supplied)
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> It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake."

As laid down under the judgment quoted above, review would be permissible for a misconception of fact or law and if necessary subsequent events may be taken into consideration to determine if the review of this order is justified. Further, it was held that on the basis of misconception of facts and law, it was within the power of Hon'ble High Court to entertain the Review Petition. In the light of the judgment, it will be necessary if the impugned order dated 15.3.2011 has been passed under any misconception of fact or law or if sufficient ground exists for entertaining this RA.

4. In the Review Application the judgment of the Hon'ble Supreme Court in the case of **Special Director & Another –vs- Mohd. Ghulam Ghouse & Another [AIR 2004 SC 1467]** has been referred to. In this case, the dispute related to an interim order passed by the Hon'ble Bombay High Court, by which, the respondents were restrained from initiating any proceeding pursuant to the show cause notice. In this case the Hon'ble Supreme Court observed as under :

> "6. In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which has weighed with it in granting such an extra ordinary relief in the form of an interim protection. This admittedly has not been done in the case at hand.
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> 7. While issuing notice on 7.7.2003, this Court had granted interim stay of the impugned interim order. The respondent had entered appearance and we have heard the learned senior counsel on either side. In the fitness of things, taking into account the above circumstances, we dispose of the appeal with a direction that the proceedings emanating from the show cause notice shall be continued, but the final order passed pursuant thereto shall not be communicated to the respondent No.1 (writ petitioner) without leave or further orders of the High Court. The writ petition shall be disposed of on merits in accordance with law. Any observation made in this appeal shall not be construed to be expression of any opinion on the merits of the matter pending before the High Court. Since the controversy is of a very limited as well as serious nature, the High Court may explore the possibility of early disposal of the writ petition. The appeal is allowed to the extent indicated with no order as to costs."

Since in the present Review Application, the controversy relates to the order dated 15.3.2011 of this Tribunal by which the OA No. 96/2008 filed by

the applicant challenging the charge sheet has been dismissed, the judgment in above case has no application for deciding this RA.

5. In **Ajit Kumar Rath v. State of Orissa (1999) 9 SCC 596**, Hon'ble Apex Court considered the power of review vested in the Tribunal and held as under:-

> "30. 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.
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> 31. 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."

6. In the case of **Inder Chand Jain (Dead) through Lrs. Vs. Motilal (dead) through Lrs. reported in (2009) 14 SCC 663,** Hon'ble Apex Court held as under:-

> "10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.
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> 11. Review is not appeal in disguise. In Lily Thomas v. Union of India this Court held : (SCC p. 251 para 56)
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> > "56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise."

7. The challenge of the impugned order in this RA is mainly on account of the fact that since the interim order dated 23.12.2008 was granted directing the respondents not to take final decision in the disciplinary proceeding initiated against the applicant, the order dated 15.3.2011 is based on mistake apparent on the face of the record. We fail to understand how a favourable interim order, that was passed without considering the counter or detailed

reply of the respondents, would imply that the case of the applicant has force to allow this OA. The order dated 15.3.2011 has been passed after considering the counter filed by the respondents and after referring to settled law on this issue.

8. The other ground in this RA was that the para 3 of the impugned order wrongly mentioned that since the applicant was GDSBPM, he was appointed as SAS aged. A view has been taken in the order dated 15.3.2011 that issue of charge sheet does not amount to any adverse order and it does not give rise to any cause of action, since the applicant had the opportunity to explain the allegations before the authorities. If the applicant felt that the alleged misconduct does not pertain to his activity as GDSBPM, it was open for him to take such plea before the Inquiry/Disciplinary authority. It was further noted in the order dated 15.3.2011 that District Small Savings Officer, Sambalpur had directed the applicant to deposit the misappropriated money amounting to Rs.1,38,050/-. Since no misconception of fact or law in the order dated 15.3.2011 has been demonstrated by the applicant, this RA will not be maintainable. If the applicant is aggrieved with the appreciation of fact and application of law in the impugned order dated 15.3.2011, he is free to take appropriate legal action as per law.

9. In view of above and after considering the submissions and pleadings on record, we are of the considered view that the grounds mentioned in this Review Application do not relate to the grounds regarding misconception of facts or law and these pertain to interpretation/application of law, for which the Review Application will not be maintainable. Therefore, the grounds mentioned in the Review Application do not constitute valid grounds under law to justify review of the impugned order. Accordingly the Review Application is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath