CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Review Application No. 09 of 2019
(Arising out of OA No. 58 of 2013 disposed of on 11.01.2019)

Date of Reserve: 05.04.2019

Date of Order:16.04.2019

CORAM:
HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Jadu, aged about 71 years, S/o. Late Narayan, Retd Tech Grade-III, O/O. Dy. C.E/Con/E.Co.Rly/Khurda at present at Qr.No.55, Rail Vihar, Chandrasekharpur, Bhubaneswar, resident of At- Dandaghati, PO. Saragadamakundapur, Via. Jenapur, Dist. Jajpur, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray,

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, RAIL Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN-751 017.

2. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda-751017.

3. Senior Personnel Officer, Con./Co.Ord., East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda – 751017.

4. Dy. Chief Engineer/Con/E.Co.Rly, Khurda at present Quarter No.55, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda-751017.

5. FA & CAO/Con., E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda-751017.

...Respondent

By the Advocate(s)-

ORDER

PER GOKUL CHANDRA PATI, MEMBER(A)

The applicant of this Review Application (in short RA) was the applicant in the OA No. 58/2013, which was dismissed by this Tribunal in the impugned order dated 11.1.2019 (Annexure-2 to the RA) on the ground of delay and limitation.

2. Being aggrieved, the applicant has filed this RA within the time as prescribed under the rule 17 of the CAT (Procedure) Rules, 1987 on the ground that this Tribunal order passed in OA No. 858/2005 in the case of Tipa vs. Union of India, the benefit of ACP was allowed to Tipa who was the junior of the applicant and this fact was placed before the Tribunal during hearing of the OA No. 58/2013 by this Tribunal. It is also stated that the grant of upgradation under the ACP Scheme was held to be a recurring cause of action as held by the Tribunal in OA No. 192/2010 which was upheld by Hon'ble High Vourt in W.P. (C) No. 12425/2012. The SLP filed against the order of Hon'ble High Court was also dismissed. It is further stated in the RA that the respondents in their pleadings did not raise the question of delay or limitation.

3. We have heard learned counsel for the applicant on the Review Application. He reiterated the grounds mentioned in the RA and emphasized particularly the ground that the ACP benefit has been held by the Tribunal to be a recurring cause of action and hence, dismissing the OA on the ground of limitation was an error apparent on the face of the record.

4. We have considered the grounds mentioned in the Review Application as well as the submissions of the applicant's counsel.

The applicant was engaged under the respondent-railways as casual Khalasi w.e.f. 4.9.1972 and was regularized w.e.f. 1.4.1988 in the PCR Group D post. Subsequently, he was regularized in Gr. III post of Sarang w.e.f. 1.3.1998 alongwith other employees who were similarly placed as the applicant. In the OA, it was contended by the applicant that he was brought over to the establishment of Serang in Gr. III w.e.f. 1.4.1988 when he was regularized in Group D post. But the copy of the order to substantiate that averment was not enclosed by the applicant, who retired on 30.4.2007. Some of the employees, who were similarly placed as the applicant, were allowed ACP benefits, which were cancelled subsequently. The rejection was challenged successfully in the Tribunal. The applicant was not a party in these OAs and no ACP benefit was sanctioned in his favour and cancelled, like in other cases. However, the applicant moved a representation dated 9.1.2012 to the respondents to be allowed ACP benefit like other employees who successfully challenged the order of cancellation of their ACP benefit before the Tribunal. When the respondents rejected the representation, the applicant had approached the Tribunal in the OA No. 58/2013.

5. The stand of the respondents in the OA was that the applicant was regularized in Group D post w.e.f. 1.4.1988 and then promoted to Gr. III post of Sarang w.e.f. 1.3.1998, for which no ACP benefit will be permissible. When the applicant was in service, no ACP benefit was sanctioned by the respondents, who had sanctioned the ACP benefit in favour of some other employees and cancelled subsequently. But there was nothing on record to show

that the applicant was also sanctioned the ACP benefit with other employees with whom he was claiming parity. It was observed in para 10 of the impugned order dated 11.1.2019 that there was nothing on record to show that the applicant had moved the authorities for sanction of the ACP benefit in his favour after sanction of the ACP benefit in favour of other employees in 2003, which was subsequently cancelled and restored after they successfully challenged the cancellation order in the Tribunal. The applicant, instead of claiming parity with these employees during 2003 when they were originally sanctioned the ACP benefit, waited till they got favourable order from the Tribunal against cancellation of their ACP benefit by the respondents and then the applicant had moved the authorities after about 5 years of his retirement claiming parity.

6. In the Review Application, the order of the Tribunal dated 22.3.2012 has been cited to state that the grant of ACP benefit is a recurring cause of action. Although that case was not cited in the OA, we considered the sadi order. In that OA, the concerned employee was granted ACP benefit w.e.f. 2.9.2003 against his claim of the ACP benefit w.e.f. 28.3.2000. The dispute in that case was the date from which the ACP benefit was due. In the OA No. 58/2013, the dispute was whether the applicant, who was not sanctioned ACP benefit earlier and he had not raised his claim when other similarly placed employees were being given the benefit, can raise the claim long after his retirement from service. Hence, the facts of the cited OA No. 190/2010 were quite different from the facts of the OA No. 58/2013.

7. In the above factual background, applying the ratio of judgments of Hon'ble Apex Court in the case of State of Uttar Pradesh & others vs. Arvind Srivastava & others [JT 2014 (12) SC 94] and C. Jacob vs. Director of Geology & others [AIR 2009 SC 267] and after discussing the cases cited by the applicant in OA and at the time of hearing of the OA, it was held by the Tribunal in the impugned order dated 11.1.2019 that claim of the applicant was barred by the limitation and delay under section 21 of the Administrative Tribunals Act, 1985.

8. Under the Administrative Tribunals Act, 1985, review of the order of this Tribunal can be considered under the Rule-1 Order no 47 of the CPC, which specifies limited grounds for permitting the review. 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."

9. 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 vs. Netaji Cricket Club**

reported in AIR 2005 SC 592, Hon'ble Supreme Court has held as under:-

> "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.
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> 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".
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> 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 :
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> > "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. Yet again in Lily Thomas (supra), this Court has laid down the law in the following terms:
> "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)

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."

10. In **Ajit Kumar Rath v. State of Orissa (1999) 9 SCC 596**,

Hon'ble Apex Court 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."

11. 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."

12. In view of the position of the law as discussed above, the review of the Tribunal's order is possible on very limited grounds including the error apparent on the face of the record. The grounds mentioned in the present Review Application cannot be treated as

error apparent on the face of record, for which, the review of the impugned order is impermissible under law. Hence, the Review Application, being devoid of merit, is dismissed with no order as to costs. The Registry is directed to issue a copy of this order to the counsels for both the parties.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER (ADMN.)

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