

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Review Application No. 180/00020/2019 in
Original Application No. 180/00428/2018

Wednesday, this the 29th day of May, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. K. Sudeesh Kumar, (Assistant Director, Retd.) Enforcement Directorate, Bangalore, S/o. The late Dr. V. Krishna Pillai, Aiswarya Enclave, Kochickal, West Fort, Mavelikara – 690 101, Alleppey District.
2. M.K. Appukuttan, (Assistant Director, Retd.), Enforcement Directorate, Calicut, S/o. The late M.S.Kuttappan, Vrindavan, H. No. 2/444A, Nellikavu Road, PO Karapparamba, Calicut, Kozhikode Dist., Kerala State, Pin – 673 010. **Review Applicants**

(By Advocate : Mr. Joshy N. Thomas)

V e r s u s

1. Union of India, rep. by the Secretary to Government, Ministry of Financial, Department of Revenue, North Block, New Delhi – 110 001.
2. The Director, Directorate of Enforcement, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi – 110 003.
3. The Chief Controller of Accounts, Ministry of Financial Department of Economic Affairs, Internal Audit Wing, 4th Floor, M Building, New Delhi -110 002.
4. The Pay & Accounts Officer, Pay & Accounts Office, Department of Revenue, Church Road, Central Secretariat Department, New Delhi – 110 001.
5. The Joint Director, Directorate of Enforcement, Kanoos Castle, A.K. Sheshadri Road, Near Maharajas College Stadium, Kochi – 682 011. **Respondents**

O R D E R (By circulation)

Per: Ashish Kalia, Judicial Member -

This review application had been filed by the applicants in the OA No. 180/428/2018 which was dismissed by this Tribunal vide Annexure RA1 order dated 3.4.2019. The OA was filed by the applicants claiming relief as under:

“1. to set aside Annexure A1 and A2 orders dated 5.9.2011 of the 2nd respondent in Annexure A3 and order dated 16.12.2011 of the 5th respondent in file No. A 12/3/CZ/2009 ordering recovery of the over payment made to the 2nd applicant due to fixation of pay done as per the earlier order No. 22/2009 dated 17.11.2009 of the 2nd respondent.

2. to direct the respondents to restore the earlier order No. 22/2009 dated 17.11.2009 and No. 51/2010 dated issued in file No. A 36/1/2009 granting 3rd financial upgradation under MACP scheme with Grade Pay of Rs. 6600/- in PB-3 (Rs. 15600-19100) to the applicants, and consequently re-fix their pension on the basis of the order No. 22/2009 dated 17.11.2009 dated 17.11.2009 and pay the applicants all the consequential benefits with interest and also costs.

3. to pass such further order as deemed fit and proper in the circumstances of the case and thus render justice.”

2. This Tribunal after hearing the counsel appearing for the parties and perusing the records dismissed the OA holding that the MACP guidelines clearly envisage that Grade Pay of Rs. 5,400/- is there in PB-2 and PB-3 and it should be taken as separate pays for the purpose of grant of upgradation under the MACP scheme. The rule is very clear and vocal and no further interpretation is required.

3. The apex court in *State of West Bengal & Ors. v. Kamal Sengupta & Anr.* - 2008 (2) SCC 735 has enumerated the principles to be followed by the Administrative Tribunals when it exercises the power of review of its

own orders under Section 22(3)(f) of the Administrative Tribunals Act, 1985. They are :

- “(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.
- (vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of a new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

4. By the present Review Application the case put forth by the review applicants is for re-consideration of the factual circumstance of the case which is not envisaged in the principles for review of the order as enumerated by the apex court in the aforesighted dictum. In short, the review applicants seek a re-hearing of the case which is not contemplated under the power of review envisaged under Section 22(3)(f) of the Administrative Tribunals Act, 1985. Further no error apparent on the face of the record

could be established by the review applicants.

5. In the light of the above decision and in view of the facts and circumstances of this case, we do not find any error apparent on the face of the record which would warrant review of this Annexure RA1 order. Accordingly RA is dismissed.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

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REVIEW APPLICANTS' ANNEXURES

Annexure RA1 – Certified copy of order dated 3.4.2019 in OA No. 428/2018 of this Hon'ble Tribunal.

RESPONDENTS' ANNEXURES

Nil

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