

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Review Application No. 180/00004/2019 in
Original Application No. 180/01123/2014

Wednesday, this the 10th day of April, 2019

CORAM:

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

V. Prakasan, aged 65 years
S/o Late P. Gopalan
Asst. Engineer (Civil) (Retd)
Vaniyathur House,
Kakkodi Post
Kozhikode-673 611.

..... **Review Applicant**

(By Advocate: M/s. Dandapani Associates)

V e r s u s

1. The Union of India represented by
Secretary, Ministry of Shipping
Transport Bhavan,
New Delhi-110 001.
2. The Pay and Accounts Officer
Office of the Principal Chief Controller of Accounts
Internal Audit Wing, L.D.A. Building
Jam Nagar House, Shahjahan Road
New Delhi-110 011
3. The Chief Engineer & Administrator
Andaman Lakshadweep Harbour Works
Port Blair-744 101.
4. The Deputy Chief Engineer
Andaman Lakshadweep Harbour Works
Union Territory of Lakshadweep
Kavaratti-682 555.

..... **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

This RA having been heard on 3rd April, 2019 the Tribunal delivered
the following order on 10.04.2019:

ORDER

Per: Ashish Kalia, Judicial Member -

This review application has been filed by the applicant in OA No. 180/1123/2014 which was disposed of by this Tribunal vide Annexure RA1 order dated 24.12.2018.

2. The OA was filed by the applicant seeking following relief:

“(a) call for the records from the office of respondent No. 2 to 4 and hold that the impugned orders at Annexure A16, A19, A33 and A37 are illegal and invalid and thus, quash and set aside the same.

(b) declare that the applicant is entitled to the two ACPs as also the 3rd MACP respectively as on 9.8.1999, 6.10.2000 and 6.10.2006.

(c) as a consequence to the above, it may further be declared that recovery of alleged over payment of pay and allowances to the tune of Rs. 11 lakhs plus being effected by way of withholding/adjustment of pension and insistence of payment of the difference of Rs. 1.31 lakhs plus is illegal and quash and set aside orders relating to the same,

(d) direct the respondents to restore the grant of first and 2nd ACP,

(e) And, since the applicant is also entitled to the grant of 3rd MACP w.e.f. 6.10.2006, respondents be directed to upgrade the grading in respect of the years 2004-05 and 2006-07 as very good which is the bench mark for the post held by the applicant for higher promotion and then consider the case of the applicant without taking into account the below benchmark grading and afford the 3rd MACP by way of increasing the Grade Pay of the applicant to Rs. 7600 and re-fix the last pay drawn and work out the extent of revised pension and other terminal benefits on the basis of the same and pay the difference thereof (both in respect of pay and allowances as also in respect of pension and attendant terminal benefits) to the applicant within a time frame that may be calendared by this Hon'ble Tribunal.

(f) Award interest at a rate that may be prescribed by this Hon'ble Tribunal on the arrears of pay and allowances and pension and other terminal benefits.

(g) Award cost as may be felt appropriate.”

3. This Tribunal after hearing the counsel appearing for the parties and perusing the records passed the following order:

“7. In view of the aforesaid dictum, this Tribunal is of the view that since these 2 ACRs were never communicated in which grading was reduced, that should not be taken into account and the applicant should be suitably assessed taking into account his previous ACRs. In case he is found fit, he should be considered for grant of 3rd MACP. In view of this, we direct the respondents to constitute a review DPC taking into consideration the directions given herein above, within a period of 90 days. Of the receipt of this order. The OA is disposed of with no order as to costs.”

4. Heard Mrs. Sumathi Dandapani, Sr. counsel appearing for the respondents and Shri Thomas Mathew Nellimoottil, learned Sr. PCGC appearing for the respondents. Perused the record.

5. We find that in Annexure MA-1 order a clerical mistake had crept in paragraph 6, 18th line wherein it is mentioned as “whereas for his ACR for the period 2005-06 and 2006-07”. Instead of 2005-06 it should be 2004-05. Therefore, Registry is directed to correct the said clerical mistake in paragraph 6, 18th line as under and a corrected copy of the order may be issued to the parties:

“whereas for his ACR for the period 2004-05 and 2006-07”

6. Further, we find that the grounds put forth by the review applicant in the present RA 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 *State of West Bengal & Ors. v. Kamal Sengupta & Anr.* - 2008 (2) SCC 735. In short, the review applicant 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 applicant.

7. The Hon'ble apex court in *Kamal Sengupta's* case (supra) 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.”

8. 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 RA-1 order. However, the Registry shall issue corrected copy of the order to the parties after correcting the necessary clerical mistakes as ordered aforesaid. The RA is disposed of.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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REVIEW APPLICANT'S ANNEXURES

Annexure RA-1– True copy of the order dated 24.12.2018 in OA No.
180/01123/2014

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-X-