

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Review Application No. 14 of 2018
In
Original Application No. 1532 of 2013**

Date of Order: 10.12.2018

Between:

P. Srinivas, S/o. Sri Venkata Rao,
Aged about 41 years, Occ: Assistant Audit Officer,
O/o. The Principal Accountant General
(General & Social Sector Audit), Saifabad, Hyderabad.

... Applicant

And

1. The Comptroller and Auditor General of India,
No.9, Deendayal Upadhyaya Marg, New Delhi – 110124.
2. The Principal Accountant General (G&SSA),
Andhra Pradesh, Saifabad, Hyderabad – 500 004.

... Respondents

Counsel for the Applicant ... Mr. E. Krishna Swamy, Advocate
Counsel for the Respondents ... Mrs. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... **Member (Admn.)**
Hon'ble Mr. Swarup Kumar Mishra ... **Member (Judl.)**

ORDER (By circulation)
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

This Review Application has been filed seeking review of the order dated 04-09-2018 in OA No. 1532 of 2013, which stood dismissed on merit. The operative portion of the said order, vide the penultimate paragraph 8 reads as under:-

“Thus it is vivid that, if the junior were not to get a promotion, the applicant would not have had the scope to agitate before this Tribunal by trying to describe in his own way that a pay hike within the pay band is no hike whatsoever. The hair splitting argument of the applicant that he continues to be in the same pay band and grade pay despite the increase in pay on 19-01-2006 does not stand to reason. If such logic were to be applied then the sanctity of fixing a date for increment is defiled and the whole edifice of pay fixation will be open to illogical reasoning. It is also not out of place to state

that no organization will reward its employee financially on two occasions, within a span of six months, unless there is some extraordinary contribution by the employee or some major policy shift which calls for disbursal of such a financial incentive. Here is a case where the demand is emerging by an unreasonable interpretation of the circumstances and giving a go by to the rule. Financial gain was there on 19-01-06 and that would suffice to wait for next increment due on 1.7.07.”

2. Since no hearing is considered necessary, the Review Application is being disposed under circulation as per Rule 17(3) of the C.A.T. (Procedure) Rules, 1987.

3. The applicant has filed the instant review application on the sole ground that in the case of Govt. of NCT of Delhi & Anr vs Somvir Rana &Ors has allowed a case of similar nature and the same has not been interfered with by the Apex Court in its order dated 01-09-2017 in Diary No. 23440/2017. Relying upon the said order the Principal Bench in yet another case in OA No. 825/2016, by its order dated 05-01-2018 allowed the OA. So is another decision of the Jabalpur Bench in OA No. 200/380/2016 dated 08.12.2017. Thus the contention of the Review applicant is that the above decisions having a binding precedent, this Tribunal should have followed. Hence, this review application.

4. It is ineluctable that when a judgment is cited as a binding precedent there must be similarity in facts and circumstances. Even a minute difference may tilt the balance resulting in a significant difference for distinction.

| No. | Case | Facts of the case |
|-----|-------------------|---|
| 1. | Case under Review | Pay fixed as per the 6 th CPC recommendation w.e.f. 01-01-2006. Next increment to fall due on 01-07-2016. However, on 19-01-2006, pay stepped up at par with juniors and consequently, the next increment fell due only as of 01-07-2007. Claim made is that the applicant is entitled to increment as of 01-07-2006 itself. |
| 2. | Sashi Kant & | Treating the applicant as promotees, lower pay |

| | | |
|----|--|---|
| | others OA 1456/ 15 (Principal Bench | fixed in the prescribed pay scale, while for Direct Recruits pay is fixed at the minimum entry pay. |
| 3. | Shabana Parveen vs UOI and others | Claim for the minimum pay scale of a TGT as recommended by the 6 th Central Pay Commission |
| 4. | Sm. Tejwinder Kaur &Ors vs UOI &Ors | Claim for fixation of pay at the minimum prescribed in the CCS (Revised Pay) Rules, 2008 for the respective posts for an entrant who joined on or after 01-01-2006. |
| 5. | Govt. of NCT of Delhi & An vs Somvir Rana & Ors | There cannot be two different pay scales – one for the promotees and the other for direct recruits since there cannot be unequal pay scales for equal work. |

The above would reflect that the claim of the Review Applicants/Applicants in the OA is disparate from the ones in the decisions relied upon by them. Had there been no juniors drawing more than the applicants, their pay would have been incremented as on 01-07-2006. By virtue of stepping up of pay w.e.f. 19-01-2006, the emoluments which were available to the junior have been made available to the applicants which amounts to advancing their increment otherwise payable as on 01-07-2006. It would have been a different matter if such increment is purely on personal basis, such as for having acquired any additional qualifications for which such increments are available or for undergoing any family planning treatment for which increments are afforded in which case, the normal increment available would be available to the applicant as on 01-07-2006. Such being not the case here, the claim of the applicants is not based on any valid rules. None of the vested rights of the applicants has been hampered.

5. A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2

SCC 167]. The review also does not fall under any of the categories prescribed by the Apex Court in the case of State of W.B. vs Kamal Sengupta (2008) 8 SCC 612 which are as under:-

35. The principles which can be culled out from the above noted judgments 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 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.

6. The Review application thus fails and is dismissed in circulation. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 10th day of December, 2018

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