

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

REVIEW APPLICATION NO.203/00031/2018
(in OA No.203/00804/2015)

Jabalpur, this Friday, the 14th day of December, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Union of India-Through the Secretary, Railway Board,
Rail Bhawan, Raisena Road, New Delhi-110001
2. General Manager, South East Central Railway,
New GM Building, Bilaspur, Chhattisgarh-495004
3. Chief Personnel Officer, GM Office Complex,
South East Central Railway, Bilaspur, Chhattisgarh-495004
4. Assistant Personnel Officer, South East Central Railway,
Bilaspur, Chhattisgarh-495004

-Applicants

V e r s u s

1. Kaushik Mukhopadhyay, S/o Late A.K.Mukhopadhyay,
Aged about 60 years, Retd. OS, SECR/BSP,
R/o Flat No. 51, Zeenat Vihar Phase-II, Ganesh Nagar,
Bilaspur, Chhattisgarh-495001
2. Praveen Kumar S/o Shri Raja Ram, Aged about 40 years,
posted at Chief Office Superintendent, O/o Principal
Chief Commercial Manager, South East Central Railway,
Bilaspur, Chhattisgarh-495004

-Respondents

O R D E R (in circulation)

By Navin Tandon, AM-

This Review Application has been filed by the applicants
(original respondents) to review the order dated 23.07.2018 passed
by this Tribunal in Original Application No.203/00804/2015.

2. From perusal of the order under review we find that aggrieved by his non-promotion to the post of Chief Office Superintendent on the basis of restructuring in Pay band-II Grade Pay 4600 (9300-34800) due to element of reservation, the respondent No.1 (original-applicant) had filed the said Original Application No.203/00804/2015.

2.1 The Tribunal after considering the pleadings of the respective parties, as well as the earlier decisions passed by the Tribunal and the Hon'ble Supreme Court, had allowed the aforementioned Original Application No.203/00804/2015, with the following directions:-

*“(7). In this case we find that respondents have not controverted the specific stand of the applicant that before making selection, the respondents have not carried out the mandatory exercise of collecting quantifiable data as envisaged in **M.Nagaraj** [(2006) 8 SCC 212]. Thus, we are in full agreement with the findings arrived at by the Principal Bench in the aforementioned case.*

(8). Accordingly, this Original Application is allowed. The impugned promotion order dated 01.09.2015 (Annexure A-1) and Office Memorandum dated 20.08.2015 (Annexure A-2) are quashed and set aside to the extent they pertain to private respondent No.5. The official respondents are directed to consider the case of the applicant for grant of restructuring promotion to the post of Chief Office Superintendent, without the element of rule of reservation, and if found suitable grant him all consequential benefits, within a period of three months from the date of communication of this order. The financial benefits drawn by the respondent No.5 consequent to his promotion as Chief Office Superintendent shall not be recovered. No costs”.

3. Now, the applicants-UOI have filed the present review application mainly on the ground that the “Hon’ble Supreme Court of India in SLP(C) No.30621/2011 & other connected matters- **Jarnail Singh & others Vs. Lachhmi Narayan Gupta & others**, decided on 26.09.2018 held invalid the conclusion in **M.Nagaraj**’s case that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in **Indra Sawhney**”.

4. It may be noted that scope of review under the provisions of Order 47 Rule 1 of Civil Procedure Code, which provision is analogous to Section 22 (3) (f) of Administrative Tribunals Act, 1985 is very limited.

5. The power of review available to this Tribunal is the same as has been given to a Court under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code. The apex court has clearly stated in **Ajit Kumar Rath Vs. State of Orissa and others**, (1999) 9 SCC 596 that: “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”. This Tribunal can not review its order unless the error is plain and apparent. It has clearly been further held by the apex court in the said case that: “[A]ny 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. Hon'ble Supreme Court in the matters of **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhury (Smt.)**, (1995)1 SCC 170 referring to certain earlier judgments, observed that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error can not be cured in a review proceeding.

7. It is also settled principle of law that the Tribunal cannot act as an appellate court for reviewing the original order. This proposition of law is supported by the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Tarit Ranjan**

Das, 2004 SCC (L&S) 160 wherein their lordships have held as under:

“The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and *rehearing of the matter to facilitate a change of opinion on merits*. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application”.

8. Hon'ble Supreme Court in the matters of **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008)2 SCC (L&S) 735 scanned various earlier judgments and summarized the principle laid down therein, which reads thus:

“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 CPC.

(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.”

(emphasis supplied)

9. In the matters of **Kamal Sengupta** (supra) the Hon’ble Supreme Court has clearly held that a decision/order cannot be reviewed under Section 22(3)(f) of the Administrative Tribunals Act, 1985 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior court. Since the Hon’ble Supreme Court’s decision dated 26.09.2018 in the matter of **Jarnail Singh** (supra) is subsequent to the order dated 23.07.2018 passed by this Tribunal in OA No.203/00804/2015, therefore, applicants-UOI can not seek review of the order of the Tribunal on that basis.

10. Since no error apparent on the face of record has been pointed out by the applicants-UOI in the instant Review Application, warranting review of the order, in terms of the law laid down by the Hon’ble Supreme Court in the aforementioned cases, the present Review Application is misconceived and is liable to be dismissed.

11. In the result, the Review Application is dismissed at the circulation stage itself.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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