

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Tuesday 20th day of November Two Thousand And Eighteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)
THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

M.A. 310/319/2017
in
RA.310/12/2017
in
O.A. 310/1532/2014
&
RA.310/12/2017
in
O.A. 310/1532/2014

1. T. Kandiappan,
S/o (late) R. Thirumalaisamy,
No.103, Singapore Nagar,
Udumalpet- 642 126,
Tiruppur District;
2. C.V.V. Radhakrishnan,
S/o. (late C.V. Venkataseshan,
No.30, Kalyan Nagar,
Kovai Road, Achipatti Post,
Mahalingapuram,
Pollachi- 642 002;
3. V. Velliangiri,
S/o. R. Velayudham,
No.509, Kumaran Street,
Karatholuvu Post,
Madathukulam Taluk,
Tiruppur District- 642 203;
4. U.V. Mariappan,
S/o. (late) Vadivel Nadar,
No.6, Sangili Nadar Street,
Udumalpet- 642 126.

....Applicants/ Applicants
(By Advocate: Mr. R. Malaichamy)

Versus

1. Union of India Rep. by its
Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan, Sansad Marg,
New Delhi- 110 001;

2. Superintendent of Post Offices,
Pollachi Division,
Pollachi- 642 001.

.....Respondents/Respondents.

(By Advocate: Mr. S. Nagarajan)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard both sides. M.A. 319/2017 seeking condonation of delay of 95 days in filing RA is allowed.

2. This RA has been filed by the applicant against the order passed in O.A. 1532/2014 dated 11.08.2016. Learned counsel for the applicant would allege that an erroneous statement had been recorded in the said order to the effect that W.P. No. 11414/2012 filed by the respondents before the Hon'ble High Court of Rajasthan was still pending for disposal. The High Court of Rajasthan dismissed the said W.P. on 10.08.2015 which had not been taken note of. Had the Tribunal been informed correctly, the order of the Tribunal would have been different, it is alleged.

3. It is further submitted that subsequently based on orders of the Tribunal/High Court/Supreme Court, several OAs had been decided in favour of similarly placed persons and, therefore, the applicants in the OA were also entitled to similar relief notwithstanding the order of this Tribunal in the said O.A.

4. Learned counsel for the respondents would submit that even if it is assumed that the statement referred to above by the RA applicant was erroneous, the order of this Tribunal would show that it was passed placing reliance of the order of this Tribunal in O.A. 1089/2012 and 309/2015 dated 08.01.2016. If the applicants were aggrieved with the said order, they

should have filed W.P. before the Hon'ble High Court. It is too late to agitate the matter in review as there is no error apparent on the face of records. If a similar case had been decided subsequently and a contrary view taken, it would be no justification to reopen the case by way of a review application.

5. We have considered the facts of the case and submissions made by the rival counsel. It is true that this Tribunal while passing order dated 11.08.2016 in O.A. 1532/2014 had recorded the contention raised by the respondents in their reply statement that judgment dated 22.05.2012 of Jodhpur Bench of the Tribunal in O.A. No.382/2011 had not correctly interpreted the order issued by the D.G., Department of Posts in O.M. No.4-7/MACP(S)/2009/PCC dated 25.4.2011. The department had filed Writ Petition No.11414/2012 before the High Court of Rajasthan and the same was still pending for disposal. However, this Tribunal had also recorded the judgment of Hon'ble Delhi High Court in W.P.(C) 4131/2014 dated 05.08.2014 after referring to the judgment of Jodhpur Bench of this Tribunal in Hanwar Lal Regar Vs. UOI & Ors. in OA 383/2011 . It was mentioned that the Hon'ble Delhi High Court had recorded a finding that the fact that the entry of a departmental candidate to the cadre of Postal Assistant is by way of direct recruitment was unexceptionable. However, after considering the order passed by this Tribunal in O.A. 1089/2012 and 309/2015 dated 08.01.2016 which appeared to distinguish similar cases where contrary orders had been passed by the other Benches, the OA was dismissed.

6. It is also seen that the applicants relied on the order of the Jodhpur Bench in OA. 382/11 dated 22.05.2012 which was not considered adequate by this Bench to grant relief sought by the applicant. As the order of this Bench was made after perusing the order of the Hon'ble Delhi High Court and yet the O.A was dismissed relying on the order of the Tribunal in O.A. No. 1089/2012 and 309/2015 dated 08.01.2016, the dismissal of the Writ Petition by the Hon'ble Rajasthan High Court against the order passed by the Jodhpur Bench which was not brought to the notice of the Bench either by the applicant or by the respondents would not warrant a review of the order of this Tribunal in a review application as the scope of review is very limited.

7. At this stage, learned counsel for the R.A. applicants alleges that after the dismissal of the Writ Petition by Hon'ble Rajasthan High Court, number of cases had been decided by the Tribunal in favour of similarly placed persons. However, it is not possible to review the order of this Bench on the basis of such subsequent developments.

8. Hon'ble Supreme Court in the case of **State of West Bengal & others v. Kamal Sengupta and Another** (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, Hon'ble Supreme

Court laid down the principles subject to which the Tribunal can exercise the power of review. The same are as follows:-

- "(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 of 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.**

(emphasis supplied)

9. Hon'ble Supreme Court in another judgment in the case of **Union of India v Tarit Ranjan Das** 2004 SCC (L&S) 160 while dealing with the order passed by the Tribunal in a review application at paragraph 13 observed as under:-

"The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. 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 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 original application. This aspect has also not been noticed by the High Court."

(emphasis supplied)

10. Since the applicant relied on the order passed by the Jodhpur Bench in O.A. 382/2011 dated 22.05.2012 against which a Writ Petition was stated to be pending in the Hon'ble Rajasthan High Court, it was incumbent on the applicants to ascertain the status of the same and rely on the order of the Hon'ble Rajasthan High Court if it was favourable to them. As this was not done and it is not admissible in law to review the order in the light of the subsequent judgment of a co-ordinate or larger bench of the Tribunal or superior court, the only option that is available to the applicants was to file a

Writ Petition in the Hon'ble Madras High Court at the relevant time, if they were aggrieved.

11. In view of the above, the RA is liable to be dismissed. However, if it is true that many similarly placed persons have been given the benefit of subsequent orders of the courts and the contention of the applicants that to be similarly placed is correct, the order passed in the OA need not be a bar to their being considered by the competent authority for relief/ benefits similar to that granted to such persons.

12. RA is disposed of with the above observations.