

Central Administrative Tribunal
Patna Bench, Patna.
RA/050/00054/2019
[O.A./050/00663/2017]

Date of Order:- 28.11. 2019

C O R A M

Hon'ble Shri J. V. Bhairavia, Member [J]



1. Union of India, through the Secretary, Government of India, Central Board of Excise & Customs, New Delhi – 110007.
2. The Assistant Commissioner [Personnel & Vigilance], Central Excise, Revenue Building, Patna – 800001.
3. The Deputy Secretary, Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, New Delhi -110007.
4. The Assistant Commissioner, Central Excise, Gaya Division, Gaya.
5. The Director [Establishment], Department of Personnel and Training, Government of India, New Delhi – 110001.
6. The Director, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, New Delhi – 110001.
7. The Administrative Officer, Central Excise, Revenue Building, Patna – 800001.
8. The Joint Commissioner [Hqrs.], Central Excise, Jamshedpur.

.....Applicants/Respondents.

By Advocate : Mr. H.P.Singh

Vrs.

1. Baiju Shah, son of Sri Ram Prasad Sah, resident of Village – Charra, PO – Ajwan, P.S. Naubatpur, District – Patna.
2. ShashiBhushanPandit, son of Sri MangluPandit, resident of Village, PO and PS – Simgriawan, District- Patna.
3. KumudSarkar, son of Sri Ravi Haran Sarkar, resident of Mohalla – Opposite Hanuman Mandir, Chandmari Road, PO & PS – Kankarbagh, District – Patna.
4. Suman Kumar Singh, son of Sri Ram Ayodhya Singh, resident of Village and PO – Mehia, District –Saran [Chapra].



5. Sanjay Kumar, son of Sri Wakil Rai, resident of Village – Bigrapur, PO, GPO, Patna, PS – Jakkanpur, District – Patna.
6. Md. Jamiruddin, son of M. Azim, resident of Dravi Line, Saguna More, PO & PS – Danapur Cantt., District – Patna.
7. Arun Kumar, son of Sri Satya Narain Lal Das, resident of Village – Dakram, PO and PS – Bahera, District – Darbhanga.
8. Suraj Prasad, son of late Ramdeo Prasad Thakur, resident of village- Bhataura, PS – Bagaha, District – East Champaran.
9. Kameshwar Nayak, son of late Ballu Nayak, resident of Village – Urguttu, PS – Thakurgaon [previously Pitharia], District – Ranchi.
10. Mahendra Pratap Raju, son of Late Manjura Ram, resident of PMCH, Patna, PO – Bankipur, PS – Pirbahore, District – Patna.
11. Sachidanand Singh, son of Sri Ram Chela Singh, resident of Village – Barma, PO – Nasejh, PS – Kudra, District – Bhabhua.

.... Respondents/Applicants

By Advocate : None

ORDER

[Under Circulation]

Per Jayesh V. Bhairavia, Member [J]:- The instant Review Application bearing No. RA/050/00054/2019 has been filed by the applicants [respondents in OA] to review the order passed by this Tribunal on 29.05.2019 in OA No. OA/050/00663/2017 on the ground that the on the basis of letter dated 29.08.2018 of the Assistant Chief Account Officer, Central Tax Audit Commissionerate, Patna, the genuineness and correctness of the said letter dated 07.06.2016 was specifically rebutted in para 14 of the written statement. The applicants [respondent in OA] further pleaded that on perusal of Annexure-A/9 of the OA that, it does not bear any memo number nor letter number, therefore, it does not show that earlier temporary status was shown to be w.e.f. 01.06.2015 in respect

of applicant no.1, Baiju Sah has been modified or altered. These facts coupled with Annexure-R/2 to the written statement. Therefore, the said letter dated 07.06.2016 does not appear to be a genuine document. The applicants [respondent in OA] further pleaded that considering the case of the parties in para 15 of the judgment dated 05.08.2019 passed in OA 663/2017 [the judgment under review] whereby the Tribunal has observed that the respondents have not rebutted grant of temporary status to applicant no.1 w.e.f. 01.09.1993. This is an error of record. As stated earlier, the respondents have already rebutted and the said facts had raised a serious doubt on the correctness and genuineness of the said documents.



2. The present RA has been filed on 23.09.2019 to review the order passed by this Tribunal in OA No.663/2017 on 05.08.2019. The applicants [respondents in OA] have filed one MA No.419/2019 to condone the delay in filing the review application, which is not at all permissible under the A.T. Act. The review application should have been filed within 30 days from the date of order or from the date of receipt of a copy of the order. In the instant case, the applicants [respondents in OA] received certified copy of the order on 19.08.2019.

3. The Tribunal in its order dated 05.08.2019 passed in OA 663/2017 observed that :-

"15. It emerged from perusal of the record that admittedly the applicants were engaged as casual labour by the respondents on or before 10th Sept., 1993. This Tribunal vide its order dated 25.06.2003 in OA 161/1999, the applicants were found entitled for grant of temporary status and regularization as per their seniority and accordingly directions were issued to the respondents to consider the case of the applicants and grant temporary status and regularization as per law and the scheme from the date when their juniors were



conferred such temporary status and regularization, as the case may be. The said order was upheld by the Hon'ble High Court of Patna and SLP filed by the respondents against the said order and judgment was dismissed. Thus, the directions issued by this Tribunal has attained finality [supra]. It is further noticed that vide letter dated 07.06.2016 [Annexure-A/9], the Assistant Chief Accounts Officer, Central Excise and Service Tax, Patna intimated the Pay and Accounts Officer, Central Excise and Service Tax that with reference to DOPT letter dated 26.02.2016, casual labourers with temporary status clarification regarding contribution to GPF and Pension under the Old Pension Scheme, the detail of one Baiju Sah, Hawaldar is hereby forwarded for opening new GPF Account, wherein it is noticed that in the said letter temporary status has been conferred w.e.f. 01.09.1003. The said Baiju Sah, the applicant no.1 herein who has been considered for grant of TS status w.e.f. 01.09.1993, the other similarly situated applicants also require to be given same benefit. The respondents have not rebutted grant of temporary status to applicant no.1 w.e.f. 01.09.1993. It is also not in dispute that the respondents have considered the notional seniority of the applicants w.e.f. 01.09.1993. Since the applicants have been considered under the DOPT OM dated 10.09.1993 for grant of temporary status and regularization, and this Tribunal has already found that the applicants are entitled to get the temporary and their regularization long back in the year 2003, as also it is not in dispute that the applicants have been working with the respondents' department, therefore, it cannot be said that the applicants are not in service before 01.01.2004. Since the applicant no.1 has been granted temporary status w.e.f. 01.09.1993, and admittedly the other applicants are also required to be considered equally as all the applicants are covered under the Scheme of 1993. It is also noticed that as per the terms of OM dated 28th July, 2016 issued by the DOPT, the benefit of Old Pension Scheme and GPF is admissible to those casual labourers who are covered under the Scheme of 1993, as noticed hereinabove the applicants are beneficiary of the Scheme of 1993, their claim to receive the benefit of Old Pension Scheme and GPF, therefore, required to be considered by the respondents. Hence, the case of the applicants are remitted to the respondents to consider the claim of the applicants afresh for grant of benefit of Old Pension Scheme and GPF in the light of order passed by Hon'ble High Court in the case of UOI vs. Mukti Prasad Yadav [supra], as also observations made hereinabove including in terms of OM dated 26th Feb., 2016 and 28th July, 2016. The respondents are directed to pass

necessary orders within a period of three months from the date of receipt of a copy of this order.

16. In view of the aforesaid discussions, the OA stands disposed of. No costs."

4. We perused the materials on record of review application. The Tribunal noticed that the Original Application was decided on merit after going through the entire materials on record including the judgments referred to by both the parties. The Tribunal find no arithmetical or typing error on the body of the judgment.



5. We find that the Apex Court in the State of West Bengal & Ors. Vs. Kamal Sengupta and another, 2008 (3) AISLJ 209, vide para 28 of its judgment has held that the ingredients to be met in case of a review order has to be the following :

- (i) Power of Tribunal to review is akin to Order 47 Rule 1 CPC read with Section 114,
- (ii) Grounds enumerated in Order 47 Rule 1 to be followed and not otherwise,
- (iii) Any other sufficient reason appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) Order cannot be reviewed on the basis of subsequent decision/judgment of co-ordinate larger Bench or superior Court,
- (v) Adjudication with reference to material which was available at the time of initial decision. Subsequent event/development is not error apparent.
- (vi) Mere discovery of new/important matter or evidence not sufficient ground for review. The party has to show that such matter or evidence was not within its knowledge and even after exercise of due diligence, the same could not be produced earlier before the Tribunal.

The Apex Court in **Gopal Singh vs. State Cadre Forest Officers' Association & Ors.**, (2007) 2 SCC (L&S) 819, has held that "a Tribunal cannot sit over its own judgment as an appellate authority." It cannot

write a second order. In a review, reasons have to be given why a review is justified. Error apparent on the face of the record has to be justified.

6. Under the circumstances, we find no merit in the Review Application. Accordingly, the MA for condonation of delay in filing the RA as also the Review Application is dismissed. No costs.

Sd/-

[Jayesh V. Bhairavia]
Member [Judicial]



mps/-