

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

REVIEW APPLICATION NO. 180/00066/2017

IN

ORIGINAL APPLICATION NO. 782/2015

WITH

MA No. 1134/2017

Tuesday this the 13th day of March, 2018

CORAM

Hon'ble Mr. U. Sarathchandran, Judicial Member

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

1. Union of India, rep. by the Secretary,
Ministry of Information & Broadcasting
Government of India, New Delhi 110 001.
2. The Prasar Bharati (Broadcasting Corporation of India)
Rep. by the Chief Executive Officer,
Office of the Prasar Bharati Corporation
2nd Floor, PTI Building, Sansad Marg,
New Delhi 110 001.
3. The Director General, All India Radio
Akashvani Bhavan, Parliament street,
New Delhi-110 001
4. The Director General, Doordarshan,
Prasar Bharati (BCI), Mandi House,
Copernicus Marg, New Delhi-110 001.
5. The Additional Director General
(Formerly the Chief Engineer),
Prasar Bharati (Broadcasting Corporation of India)
O/o the Additional Director General (SZ)
All India Radio & Television
Swami Sivananda Salai, Chennai-600 005.
6. The Deputy Director General (E)/Head of Office
Doordarshan Kendra, Thiruvananthapuram-695 043....**Review Applicants/Respondents in OA**

(By Advocate: Mr.N.Anilkumar, Sr.PCGC)

Versus

Sunny Joseph, age 50 years,
Senior Engineering Assistant,
Doordarshan Kendra, Thiruvananthapuram-43.
Residing at Kalliyadickal House, T.C. XII/757,
Muttada P.O., Thiruvananthapuram-695 025.

... Respondent/Applicant in OA

(By Advocate: Mr.M.P.Krishnan Nair)

The Review Application & MA having been finally heard on 2.3.2018, the Tribunal on 13.3.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

This Review Application is filed by the respondents in the Original Application to review the Annexure RA1 order dated 23.12.2016 passed by this Tribunal in OA 782/2015 to the extent it directs the respondents to hold DPC as per existing Recruitment Rules.

2. The Original Application No. 782/2015 has been disposed with the following directions:

“We direct that the vacancies be notified both for examination and DPC as per year of occurrence and examination and DPC be held as per existing recruitment rules and qualified candidates as per eligibility and merit in examination/seniority for promotion be promoted notionally w.e.f date of occurrence of vacancies in each quota. The entire exercise of examination and DPC be completed within six months. Those who qualify in both quotas be given the liberty to opt the more beneficial promotion from among the two quotas. OA is disposed of accordingly.”

3. The grounds for review are that the Principal Bench of this Tribunal in OA No. 2940 of 2010 had directed to finalize the merger and also the Recruitment Rules of the respondent organization in consultation with whichever authorities are involved within a period of three months and thereafter on the basis of vacancies available, consider the claim of the applicants for promotion through Departmental Competitive Examination. The above O.A was filed by similarly situated persons like the applicant in OA 782/2015. The Contempt Petition filed by the applicants (CP No.297/2911) was closed on the basis of submission of the learned counsel for Respondent No.1 wherein they undertook to finalize the amended Recruitment Rules for the merged cadre within six months. The Review Applicants submits that there is variation in the directions of

this Bench and those of the Principal Bench and the respondents are required to pursue contrary courses of action for implementation of the order. Hence the Review Applicants submit that there is an error apparent on the face of record and the same is liable to be reviewed.

4. Alongwith the Review Application, the Review Applicants have filed an M.A.No.1134/2017 to condone the delay of 284 days in filing the above Review Application. The grounds narrated for condoning the delay are that the review applicants are located in three corners of the country and each of them had to coordinate this efforts and take steps to file the review application and this caused the delay. They submit that there is no wilful laches on the part of the review applicants in filing the Review Application and the delay was only due to administrative reasons.

5. Smt. Tanooja represented Shri N.Anilkumar, learned SPCGC for the Review Applicants and Shri Rahul Prasad represented Shri M.P. Krishnan Nair, learned counsel for the respondent in the RA. They have been heard and documents/pleadings perused.

6. As per Rule 17(1) of CAT (Procedure) Rules, the review against an order is to be filed within thirty days. In this case, admittedly there is a delay of 284 days and M.A.No.1134?2017 has been filed seeking the condonation of the said delay. The grounds submitted as reason for delay are as mentioned in Para 4 of the order. Clearly it can be seen the delay has been of inordinate length. We may usefully refer to the judgment of the Hon'ble Supreme Court in the case of *Chennai Metropolitan Water Supply and Sewage Board Vs. T.T.Murali Babu (2014) 4 SCC 108*, wherein it is held as under :

“the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court

should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant, a litigant who has forgotten the basic norms, namely, procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

It was further held therein:

.....A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

Thus on the ground of delay itself, this R.A is liable to be rejected.

7. The scope for a review application is clearly defined in various orders of the Hon’ble Supreme Court. The 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 a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon’ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon’ble Supreme Court culled out the principles which 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.”*

8. Further, the Hon'ble Supreme Court in the case of **Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596** has categorically held that a matter cannot be heard on merit in exercise of power of review and if the order or decision is wrong, the same cannot be corrected under the guise of power of review. The scope for review petition and the circumstances under which such power can be exercised was considered by the Hon'ble Apex Court in *Ajit Kumar Rath's case (supra)* and held as under:

“The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake of fact or error apparent on the face of the record or for any other sufficient reason. 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. It may be pointed out that the expression ‘any other sufficient reason’ used in Order 47 Rule 1 CPC means a reason sufficiently analogous to those specified in the rule.”

9. We may also add that the Hon'ble Supreme Court in the case of **Meera Bhanja (Smt) v. Nirmala Kumari Choudhury (Smt) (1995) 1 SCC 170** held as under :

“The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review

petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226.”

10. Further the Hon'ble Supreme Court in ***Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and others – (1979) 4 SCC 389 : AIR 1979 SC 1047*** held:

“3.It is true as observed by this Court in Shivdeo Singh V. State of Punjab, AIR 1973 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

11. The Hon'ble Supreme Court in ***Haridas Das V. Usha Rani Banik (Smt) and others – JT 2006(3) SC 526*** held as under:

“Under O.47 R.1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under O.47 R 1 CPC. In exercise of the jurisdiction under O.47 R.1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise' “

12. Bearing mind the above laws set out by the Hon'ble Supreme Court, we have examined the grounds urged by the Review Applicants in support of their prayer for reviewing the order. The core contention raised by the applicant in the R.A is to the effect that there has been an order of the Principal Bench on the same subject pronounced as early as on 30.11.2010, which was not brought to the notice of this Tribunal when the O.A was heard. The Review Applicants submit that on account of the said order, compliance with the order under review becomes implausible. Admittedly

this order of the Principal Bench was not brought to the notice of this Tribunal when OA 782/2015 was considered. This was a fault on the part of the Review Applicants and does not qualify as an error of fact or law in the order said to be reviewed. Thus the Review Applicants have failed to point out any error much less an error apparent on the face of the record justifying the exercise of power under sub clause (f) of sub-section(3) of Section 22 of the Administrative Tribunals Act, 1985. The Review Application deserves to be dismissed and accordingly the same is dismissed. MA for condonation of delay also stands dismissed as no cogent and acceptable reasons have been advanced for the inordinate delay. No costs.

(E.K. Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

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Review Applicants' Annexures

Annexure RA1	True copy of the final order dated 23.12.2006 in OA No. 782 of 2015.
Annexure RA2	True copy of the final order dated 30.11.2010 in OA No. 2940 of 2919 of the Principal Bench of the CAT.
Annexure RA3	True copy of the Order of the Hon'ble Principal Bench in the C.P.No.297/2011 arising from OA No. 2940/2010 dated 17.5.2012.

Respondent's Annexures

NIL

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PPS to Member