

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

Review Application No.19/2021
with
MA No.107/2021
in
Original Application No.155/2018

Dated this the 19th day of May, 2021

CORAM :

HON'BLE SHRI JAYESH V BHAIKAVIA, MEMBER (J)

HON'BLE SHRI DR A K DUBEY, MEMBER (A)

Dalsukh Gopaldas Cholera,
Male, aged: 71 years,
Residing at: Sadguru Sadan,
6-Parshananagar,
Rajkot – 360 001.

... Applicant

By Advocate Shri P H Pathak

v/s

- 1 Bharat Sanchar Nigam Ltd.,
Through its Chairman/Managing Director,
'Sanchar Bhavan', New Delhi – 110 011.
- 2 Chief General Manager,
Bharat Sanchar Nigam Ltd, Gujarat Circle,
CG Road, Ahmedabad – 380 006.
- 3 General Manager,
Rajkot Telecom District, Loha Nagar,
Gondal Road, Rajkot – 360 002. ... Respondents

ORDER (BY CIRCULATION)

Per Dr A K Dubey, Member (A)

1. This review application No.19/2021 was filed by the applicant against the order of this Tribunal in OA No.155/2018 passed on 01.10.2020 with the following prayer:-

“(A) *The Hon’ble Tribunal be pleased to recall/review final order in OA 155/2018 at Annexure-A/1 to this application and grant all the relief prayed for in OA 155/2018.*

(B) *Pending admission and final disposal of the present application, the Hon’ble Tribunal be pleased to direct the respondents to act as per the order of the Hon’ble Apex Court in case of K.R.Prajapati and others V/s. BSNL and others dated 7.8.2014 in Civil Appeal No.4527/2006.*

(C) *Any other relief which the Hon’ble Tribunal deems fit and proper in the interest of justice may be granted together with cost.”*

2. The review applicant has made the above prayer on the following grounds:-

- (i) The judgments/arguments of the applicant’s advocate while adjudicating in above said OA were lost sight of.
- (ii) This Tribunal has lost sight of the order in OA No.457/1997 which, the counsel argued, was a judgment in rem.
- (iii) On merit, respondents’ have no case.
- (iv) Delay was condonable.

3. In course of arguments in the OA No.155/2018, the counsel for the applicant relied on certain judgments. He quoted K.C. Sharma & Ors v. Union of India 1997(6) SCC 721 about condonation of delay that it should be allowed. Further, on the issue of not treating similarly situated persons differently and no person should be allowed to derive advantage over others, the counsel for the applicant relied on State of Karnataka v. C.Lalitha (2006) 2 SCC 747. That the benefit of judgment in rem is available to all similarly situated persons irrespective of whether they approached the court or not, was the counsel’s argument on the basis of judgment in State of UP & Ors v. Arvind Kumar Srivastava & Ors. (2015) 1 SCC 347 and in Bapalal J. Gadhvi v. State Of Gujarat And Anr. reported

in 2007(2) GLR 1374. He quoted Hon'ble Apex Courts ruling in Vipulkumar Atmaram Parekh & Ors. in SCA 1314/2009 on 24.03.2009 that law declared by the Apex Court and High Courts are binding on all courts and tribunals.

4. The Review Applicant has also preferred a M.A No.107/2021 for condonation of delay as he could not file the review within the stipulated time due to Covid situation in Ahmedabad.
5. 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.”*

6. The Hon'ble Supreme Court in an another judgment in the case of Union of India v/s Tarit Ranjan Das 2004 SCC (L&S) 160 while dealing with the order passed in 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 reason 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 review petition as if it was hearing original application. This aspect has also not been noticed by the High Court.”

7. Bearing in mind the above principles laid down by the Hon'ble Supreme Court, existence of an error on the face of the record is *sine qua non* for review of an order. It is not permissible for the forum to hear the review application to act as an Appellate Authority in respect of the original order by a fresh hearing of the matter to facilitate a change of opinion on merits. We have examined the grounds urged by the review applicant in support of his prayer for reviewing the order and we find that the review applicant has failed to bring out any apparent error on the face of order under review.
8. As far as the contention in the review application about losing sight of the judgments quoted, the issue of delay and order in OA No.457/1997 are concerned, a plain reading of the order would indicate that these issues have been dealt with and the issue of delay was discussed as evident from paragraphs 6, 7 & 14 of the order in OA No.155/2018. Further, the order in OA No.457/1997 was not lost sight of, is clear from paras 7 & 14 of the order in OA No.155/2018. Case laws that were particularly relevant to the issue at hand were cited in the order. This Tribunal had considered the main grievance voiced in the OA and it was found to be lacking in merit for the reasons explained therein. In our considered view, the grounds and reasons on which this review application has been moved, are not tenable to warrant a review of the decision in OA No.155/2018.
9. Thus, in view of the above discussion and in light of the law laid down by Hon'ble Apex Court (Supra), the applicant has 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. The MA is also disposed off.

(A.K.Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member

SKV