

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Rev. Pet. No. 13 of 2021

Ref:- W.P.(C) No. 741 of 2019

Shri Soraisam Manimacha Singh aged about 59 years
S/O S. Ibobi Singh of by occupation a Veterinary Field
Assistant of Assam Rifles, a resident of Chingmakha
Maisnam Leikai, P.O. Imphal, P.S. Singjamei and
District – Imphal West, Manipur.

..... Petitioner

-Versus-

1. The Union of India, represented by its Secretary,
Ministry of Home Affairs, Government of India,
North Block, New Delhi-01.
2. The Director General of Assam Rifles, Ministry of
Hoe Affairs, Laitkhor, Shillong-793010.
3. The Controller of Accounts, Pay & Account Office
(Assam Rifles) Shillong, Old DGAR Complex,
Laitmukhra, Pin Code-793011.

..... Respondents

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner :: Mr. Ajoy Pebam, Advocate

For the Respondents :: Mr. Kh. Samarjit, DSGI

Date of Hearing and
reserving Judgment & Order :: 30.03.2023

Date of Judgment & Order :: **17.04.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, Acting CJ)

This review petition has been filed by the petitioner to review the order dated 23.1.2020 passed by this Court in W.P.(C) No.741 of 2019.

2. Heard Mr. Ajoy Pebam, learned counsel for the petitioner and Mr. Kh. Samarjit, the learned DSGI for the respondents.

3. The petitioner sought to review the order dated 23.1.2020 passed by this Court W.P.(C) No.741 of 2019 by contending that the ACP scheme dated 9.8.1999 provides for financial upgradation under the scheme to the next higher grade with the existing hierarchy in a cadre/category of the post without creating new posts for the purpose. However, in the case of isolated posts, in the absence of defined hierarchy grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher pay scales.

4. Mr. Ajoy Pebam, the learned counsel for the petitioner argued that the post of VFA (Assam Rifles) is an isolated post having no promotional post and at the same time, it

falls under common category of post governed by Section 30(b) of the Indian Veterinary Council Act, 1984 as also clarified in the 5th CPC (ROP) 1997. He would submit that comparisons have been made with AFO (Vety) in SSB which is in the same Ministry and carrying the same pay scale of Rs.4000-6000/- and, as such, granting of Rs.4000-6000 to 5500-9000/- is in accordance with the Office Memorandum dated 9.8.1999, which was later on clarified by the Office Memorandum dated 10.2.2000 and 18.7.2001 respectively.

5. The learned counsel further submitted that the Office Memorandum dated 9.8.1999 will only apply to those isolated post who does not find any similarity of post in the same Ministry/Department/Cadre or whose scale of pay has not been recommended separately or as specifically by the Pay Commission for mobility under ACPs.

6. The learned counsel urged that during the course of hearing of the writ petition, the petitioner has failed to appraise this Court about the fact that DoPT Office Memorandum dated 18.7.2001, Point of Doubt 44, which clearly states that Annexure II of the Office Memorandum dated 9.8.1999 applies where Pay Commission has not made any specific recommendation regarding scales to be allowed under the ACPs and where it is

not possible to identify similar post in some organization. Therefore, it is very clear that Annexure II of the Office Memorandum dated 9.8.1999 will apply where no any similar post is found in same Organization/Ministry or any specific scale of pay is not recommended for ACPs by Pay Commission.

7. Adding further, the learned counsel for the petitioner submitted that due to non-appraisal from the side of the petitioner during the hearing of the writ petition about the applicability of the Office Memorandum dated 10.2.2000 and 18.7.2001 respectively, this Court was pleased to held that the petitioner cannot plead for himself a benefit except under the ACP scheme dated 9.8.1999 and the notification dated 30.9.1997.

8. The learned counsel for the petitioner then submitted that the petitioner has failed to apprise this Court while hearing the writ petition that the post of the petitioner (VFA) is an isolated post and according to the clarification given in the Office Memorandum dated 10.2.2000 and 18.7.2001, similarity of post in the same Ministry/Department/Cadre is drawn and that AFO is a similar post in the same Ministry/Department/Cadre and that the petitioner is entitled to get a financial upgradation of the pay of the DFO as 1st ACP.

9. The learned counsel next submitted that the petitioner was in the pay scale of Rs.4000-6000/- and if only the ACP scheme dated 9.8.1999 is taken into account, the petitioner is only liable to receive the 1st ACP grant of Rs.4500-125-7000 (S-8) in accordance with the Standard Common Pay Annexure-II of the Office Memorandum, but the petitioner must receive promotional pay scale of Rs.5500-9000/- at 1st ACP according to the clarification of ACP scheme vide Office Memorandum dated 10.2.2000 and 18.7.2001. Since the petitioner belongs to the common category para veterinary staff for which a composite pay scale of Rs.4000-6000 has been accorded. Moreover, AFO (Vety.) in SSB falls under the same Ministry and is also similarly situated with the post of VFA in Assam Rifles and, as such, granted the scale of pay of promotional post of AFO (Vety.) which is DFO (Vety.) with the corresponding pay of Rs.5500-9000/-. Therefore, due to the failure of the then counsel appeared for the petitioner in not properly appraising the case of the petitioner before this Court, the petitioner suffered adverse orders of dismissal of the writ petition.

10. Arguing so, the learned counsel for the petitioner submitted that the petitioner has got good case in succeeding in the writ petition. Thus, a prayer has been made to review the

order dated 23.1.2020 passed in W.P.(C) No.741 of 2019 and grant the reliefs as prayed for in the writ petition. In support, the learned counsel placed reliance upon the following decisions:

- (i) *Board of Control for Cricket in India v. Netaji Cricket Club and others*, (2005) 4 SCC 741.
- (ii) *State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others*, (2015) 1 SCC 347.
- (iii) *M.M.Thomas v. State of Kerala and another*, 2000 Legal Eagle (SC) 29.

11. Supporting the order under review, Mr. Kh. Samarjit, the learned DSGI submitted that there is no error in the order of this Court dated 23.1.2020 passed in W.P.(C) No.741 of 2019 and having found that there is no infirmity in the order of the CAT, this Court has rightly dismissed the writ petition and there is no valid ground to review the same. Thus, a prayer has been made to dismiss the review petition.

12. We have considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

13. The writ petition, being W.P.(C) No.741 of 2019, has been filed by the petitioner to quash the order dated 17.1.2019 passed by the Central Administrative Tribunal, Guwahati Bench in O.A.No.042/00285/2015 and the letter dated 3.1.2013 of the Pay and Accounts Officer and the speaking order dated 22.5.2015 and to direct the respondents to grant the 1st financial upgradation in parity with the post of AFO (Vety) SSB and other common category para veterinary in the scale of Rs.5500-9000 (pay scale of DFO (Vety) SSB) w.e.f. 9.8.1999 along with all consequential benefit, monetary allowances and interest on the arrear pay in accordance with the Office Memorandum dated 10.2.2000. The petitioner also sought direction on the respondents to fix the pay at Rs.4300 as on 1.1.1996 with date of next increment February 1996 in the scale of Rs.4000-100-6000/- vide III proviso of fixation of Pay Rules, 1997 and accordingly calculate the pay of the petitioner.

14. Though it is not necessary to state the case projected by the petitioner before the CAT in O.A.No.042/00265/2015 and its decision, for the sake of completion, the finding of arrived at by the CAT is reproduced hereunder:

“9. The issue here is nothing but comparing of an apple with another apple. It is not contested by the applicant that the post of Veterinary Field Assistant in Assam Rifles is isolated post. If the post of Veterinary Field Assistant is isolated one, accordingly the order of Ministry of Finance in regard to the implementation of the 5th CPC and also financial upgradation under ACP has to be complied with. It that is so, since the applicant was placed in the scale of Sl. No.7 Rs.4000-100-6000, the next scale of financial upgradation would naturally S-8 4500-125-7000 and obviously not as S-10 which is the scale of 5500-175-9000. Comparing of the isolated post of Veterinary Field Assistant of Assam Rifles that with of the pay scale of Assistant Field Officer (Vety) in the scale of Rs.4000-100-6000, Para Cadre of SSB may not be justifiable.

10. Moreover, there is no any indication from the Govt. letter as well as from the contention of the applicant that the Veterinary posts in the SSB are also isolated posts. On the face of the Govt. order dated 13.04.2004, it appears that there is a proper cadre structure in that organization. The number of sanctioned posts of the different scales against these posts is clearly indicated. Therefore, demanding of the ascending scales in the cadre of that organization only because the next higher scale

of scale 400-100-6000 is 5500-175-9000 found not maintainable.

11. Considering the above facts and relevant orders on the subject, we found that the applicant has not justified ground to sustain his O.A. The O.A. is therefore, liable to be dismissed.

12. The applicant also had prayed to direct the respondents to refund the amount already deducted from the pay of the applicant w.e.f. 09.08.1999 with admissible allowances and benefits as per existing rules promulgated by the Govt. of India. In this connection, it may be highlighted that as per decision of the Hon'ble Apex Court rendered in the case of State of Punjab & Others vs Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 no recovery is to be effect from Group 'C' employees. Therefore, it will not be justified to make recovery from the applicant for the over payment already made during the period he was placed in the higher scale of Rs.5500-175-9000 particularly when this mistake was committed by the respondents. We hereby accordingly, while dismissing the O.A.No.042/00285/2015, direct the respondents that no recovery shall be effected from the applicant for the over payment made and whatever recovery of amount already

effected shall be refunded to the applicant forthwith.

13. O.A. stands dismissed partly. No order as to costs.”

15. When the petitioner assailed the aforesaid order of the CAT in the writ petition, this Court, after analysing the arguments made by the learned counsel appearing for the parties, held as under:

“[12] The petitioner in this case cannot plead for himself a benefit except under the ACP Scheme dated 9th August, 1999 and the 30th September, 1997 Notification as he falls under the said scheme. The Tribunal was justified in dismissing the application for all the above reasons. We find no merit in the plea of the petitioner.

[13] Accordingly, finding no merit the writ petition is dismissed.”

16. It is pertinent to note that it is not the case of the petitioner that while passing the order under review this Court has committed error in dismissing the writ petition partly. On the other hand, the entire averments of the review petition blame the learned counsel who appeared for the petitioner in the writ petition by contending that the petitioner has failed to appraise

this Court. Thus, it is clear that the failure of the learned counsel for the petitioner in appraising the correct facts before this Court would not amount to error in the order as stated by the petitioner.

17. At this juncture, by placing on record, the decisions of the Hon'ble Supreme Court in the cases of (i) *Netaji Cricket Club*; (ii) *Arvind Kumar Srivastava* and (iii) *M.M.Thomas*, supra, the learned counsel contended that an application for review would also be maintainable if there exists sufficient reason therefor.

18. In *Netaji Cricket Club*, supra, the Hon'ble Supreme Court held:

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine ‘actus curiae neminem gravabit’.

19. In *Arvind Kumar Srivastava*, supra, the Hon'ble Supreme Court held:

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

20. In *M.M.Thomas*, supra, the Hon'ble Supreme Court held:

“17. If suo power of correcting its own record is denied to the High Court, when it noticed the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of record.”

21. On a thorough reading of the order of the CAT, order under review passed in the writ petition and the averments set out by the petitioner in the review petition, it is clear that on behalf of the petitioner three different counsel appeared and different grounds were raised for the claim of the petitioner. Therefore, there is no mistake apparent on the face of record and exercising review jurisdiction of this Court to review the order does not arise, as this Court while passing the order in the writ petition on merits partly dismissed the writ petition. If there is apparent errors, then this Court by exercising review power, correct such error. In the case on hand, there is no sufficient reason for reviewing the order. Therefore, the decisions relied upon by learned counsel for the petitioner are not applicable to the case of the petitioner in the facts and circumstances stated above.

22. It is settled law that under Order 47, Rule 1 of the Code, a judgment is open to review, inter alia, if there is a mistake apparent on the face of the record, the discovery of new and important matter or evidence, which after exercise of due diligence, was not within the knowledge of the petitioner or on account of some mistake or error apparent on face of record or for any sufficient reason.

23. 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.

24. In the instant case, the order sought to be reviewed has been passed based on the facts put forth by the learned counsel for the petitioner as well as the learned Additional Solicitor General and, therefore, there is no apparent error on the face of record or discovery of new facts for making the present review application maintainable.

25. A mistake or an error apparent on the face of the record means a mistake or an error which is *prima facie* visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.

26. The Hon'ble Supreme Court, in a catena of decisions, while dealing with the scope of review has held that re-appreciation of evidence and re-hearing of case without there being any error apparent on the face of the record is not permissible in the light of the provisions as contained under

Section 114 and Order 47, Rule 1 of the Code of Civil Procedure, 1908.

27. In *S.Bagirathi Ammal v. Palani Roman Catholic Mission*, reported in (2009) 10 SCC 464, the Hon'ble Supreme Court held thus:

“12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and

find out whether it satisfies any of the tests formulated above.

.....

26. As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court.”

28. Rehearing of a case can be done on account of some mistake or an error apparent on the face of the record or for any other sufficient reason. In the present case, as stated supra, there is no error apparent on the face of the record and the petitioner, in fact, under the guise of review is challenging the order passed by this Court, which is not permissible under law.

29. In the instant case, if the review petitioner is aggrieved by the order passed in the writ petition, he ought to have filed an appeal and not the review petition. The fact remains that as against order dated 23.1.2020 passed in the writ petition,

the petitioner had also preferred SLP No.8309 of 2020 before the Hon'ble Supreme Court and later on the petitioner has withdrawn the said SLP with liberty to file a review petition. Accordingly, the Hon'ble Supreme Court, by the order dated 20.8.2020, dismissed the SL.P.No.8309 of 2020. Where the order in question is appealable, the aggrieved party has adequate and efficacious remedy of preferring an appeal and not under the guise of review petition.

30. It is a settled law that every error whether factual or legal cannot be made subject-matter of review under Order 47 Rule 1 of the Code though it can be made subject-matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case. Here, we find that there is no error apparent on the face of record while passing the order under review.

31. In light of the above, this Court does not find any reason to review the order dated 23.1.2020 passed in W.P.(C) No.741 of 2019. That apart, there is no error apparent on the face of the record. No case for interference is made out in the matter.

32. In the result, the review petition is dismissed. There will be no order as to costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil