

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Civil Review No.86 of 2025

Pradeep Kumar Barik, aged about 46 years, son of Late Murlidhar Barik, resident of Qtr. No.C/20, Sector-2, P.O. & P.S.-Rourkela, District-Sundargarh (Orissa), PIN-760005.

... .. **Petitioner/Petitioner**

Versus

- 1.** Union of India through the General Manager, South Eastern Railway, Garden Reach, P.O. & P.S. Garden Reach, Kolkata-43 (W.B.).
- 2.** Chief Personnel Officer (RP), South Eastern Railway, Garden Reach, P.O. & P.S. Garden Reach, Kolkata-43 (W.B.).
- 3.** Senior Divisional Personnel Officer (SR), South Eastern Railway, CKP Division, P.O. & P.S. Chakradharpur, District-Singbhum West, Jharkhand-833102.
- 4.** Divisional Railway Manager, South Eastern Railway, CKP Division, P.O. & P.S. Chakradharpur, District-Singbhum West, Jharkhand-833102.

... .. **Respondents/Opposite Parties**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner	: Mrs. M.M. Pal, Sr. Advocate Mrs. Mohua Palit, Advocate Mrs. Manjusri Patra, Advocate
For Respondents	: Mr. Sunil Kumar, Advocate

06/16.03.2026

Per Sujit Narayan Prasad, J.

Prayer

- 1.** The instant review petition is under Article 226 of the Constitution of India, seeking review of the order dated 19.11.2024 passed in W.P.(S) No.6445 of 2017.

Facts

- 2.** The brief facts of the case, as per the pleading made in the writ petition, needs to be referred which reads as under:-
- 3.** It is the case of the review petitioner/writ petitioner that

the petitioner initially filed an Original Application bearing O.A. No. 48 of 2017 before the learned CAT at Ranchi *inter-alia* for issuance of direction upon the respondents to extend the benefit of alternative employment in terms of the Railway Circulars dated 24.09.1999, 7.08.2000 and 29.12.2000 to the petitioner at par with the same and similarly situated persons named in O.A. No. 04 of 2014, O.A. No. 176 of 2010, O.A. No. 65 of 2010, O.A. No. 84 of 2006, O.A. No. 136 of 2006, O.A. No. 30 of 2008 and O.A. No. 32 of 2008 and for a direction upon the respondents to consider the case of the petitioner for his employment in alternative post for which he is medically fit and the respondents be directed not to discriminate the petitioner and to extend the same benefit of employment under the Railway Scheme at par with the other same and similarly situated persons.

4. In O.A., it was specifically submitted that the petitioner is entitled for the same benefits of employment in alternative posts in terms of the Railway Circulars/Uniform Policy decision referring the Full Bench judgement of the learned tribunal dated 10.7.2012 passed in O.A. No. 65 of 2010 as there was a specific direction that the benefit of the said Judgement extended to the candidates who were selected against the Notification dt. 05.05.98.

5. Though, the review petitioner/writ petitioner/applicant case and claim were fully covered by the Full Bench judgement

dated 10.7.2012 passed in O.A. No. 65/2010 as he was also appeared against the same notification dated 05.05.1998, the learned Tribunal vide order dated 23.05.2017 has dismissed his case without waiting for written statement, holding applicant's/writ petitioner's O.A. is barred by limitation.

6. It is the further case of the petitioner that he had also filed a limitation application bearing M.A. No. 26 of 2017 for condonation of the delay wherein it was categorically stated that he made a representation dated 20.10.2016 after getting information about the order dated 31.10.2014 passed in O.A. No. 04 of 2014 and accordingly requested to condone the delay and to extend the same benefits at par with the petitioners in O.A. No. 04 of 2014, in O.A. No. 65 of 2010 (FB) and in O.A. No. 84 of 2006, O.A. No. 136 of 2004, O.A. No. 176 of 2010 as in all the cases, the respondents were directed to extend the benefits of alternative appointment in medically unfit candidates, in which, they are medically fit in terms of the Railway Circulars/Policy/Estt. Srl. No. 215/1999, 232/2000 and 22.4.2004 issued time to time, but the learned tribunal has not taken into consideration the aforesaid fact.

7. The petitioner, being aggrieved and dissatisfied with the order dated 23.05.2017 has moved before this Court by filing writ petition being W.P.(S) No. 6445 of 2017. The learned writ Court after taking into consideration the factual aspect has refused to interfere with the order dated 23.05.2017 passed by

the learned Tribunal, against which, the instant review petition has been filed.

Argument advanced on behalf of the Review Petitioner

8. Learned Senior Counsel for the review petitioner has taken the following grounds in assailing the impugned judgment: -

(i) It has been contended that the learned writ court, while dismissing the writ petition on the ground of delay in filing the O.A., has failed to appreciate that the Railway circulars dated 24.09.1999, 07.08.2000 and 29.12.2004 are the policy decisions of the Railway and that policy is to provide the same benefits of alternative employment to all such medically unfit candidates.

(ii) In case of policy decision, the obligation is casted upon the authorities concerned to extend that benefit to all similarly situated persons irrespective of whether they have approached or not and in such a case there is no question of limitation.

(iii) It has also been contended that the learned writ court has not considered the proposition of law that in a case when the benefit is based on the policy decision, the obligation casts upon the authority to extend the same benefits to all the similarly situated persons but having not done so, the order impugned suffers from an error. In order to buttress this limb of argument the learned senior counsel has placed reliance upon the judgment rendered by the Hon'ble Apex Court in the

case of ***Union of India and Anr. Vs. S.K. Murti (CC 6864/2011)***).

(iv) It has been contended that while dismissing the writ petition the judgement dt. 05.01.2022 passed in W.P.:(S) No. 937 of 2014 by the Co-ordinate Bench has been referred but failed to consider the para-3 of that judgement wherein referring the judgement passed in O.A. No. 65 of 2010 (F.B.) and the issue of applicability of the Railway Board's circular, policy decision, delay was condoned after referred the judgement of the Full Bench passed in O.A. No. 65 of 2010.

9. Learned senior counsel for the review petitioner, based upon the aforesaid grounds, has submitted that the same having not been considered in right perspective by the writ Court and as such, it is a fit case for exercising the power of review.

Arguments advanced on behalf of the Respondent

10. *Per Contra*, Mr. Sunil Kumar, learned counsel for the respondents has submitted that all the grounds which are being raised, have already been taken into consideration by this Court and the petitioner by re-agitating the same, is trying to make the said ground to be a ground for review, which is not permissible.

11. It has been contended that the case of the present petitioner is not to be treated as precedent for other such persons approaching the court after a prolonged delay.

12. It has further been contended that the ground is only to be entertained if acceptable within the scope to exercise the power

of review. All the grounds which have been raised herein by the learned counsel for the petitioner have already been taken into consideration by this Court and as such, the said ground cannot be said to be a new one for the purpose of coming to the conclusion that error apparent on the face of record or the fact could not be produced in spite of all due diligence, hence, order impugned, therefore, is not sought to be reviewed.

13. Learned counsel, based upon the aforesaid grounds, has submitted that all these grounds however cannot be taken as a ground to review the order passed by the writ court.

Analysis

14. We have heard the learned counsel for the parties and gone through the rival submissions made on behalf of the parties, pleadings and the order sought to be reviewed.

15. This Court, before appreciating the aforesaid contentions of the learned counsel for the parties, deems it fit and proper to refer underlying principle of the review or the power/scope of review.

16. The Hon'ble Apex Court in the case ***Moran Mar Basselios Catholicos and Anr. vs. Most Rev. Mar Poulouse Athanasius and Ors., [AIR 1954 SC 526]***, particularly, at paragraph-32 has observed as under:

“32. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasis that the scope of an application for review is much more restricted than that of an appeal. Under the

provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XL VII, Rule I of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified, grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason."

17. Likewise, in the case of **Col. Avatar Singh Sekhon Vrs. Union of India, (1980) Supp. SCC 562**, the Hon'ble Apex Court observed that a review of an earlier order cannot be done unless the Court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib 1975 1 SCC 674 this Court observed: 'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

18. Further, the Hon'ble Apex Court in the case of **Kamlesh Verma vs. Mayawati**, reported in **(2013) 8 SCC 320** has observed that review proceedings have to be strictly confined to

the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized as under:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason. The words “any other sufficient reason” has been interpreted in Chajju Ram v. Neki, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasiusto mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.,.

20.2. When the review will not be maintainable:—

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

19. It is evident from the aforesaid judgments that the power of review is to be exercised if there is any error occurred on the face of the order or the factual aspect could not have been brought to the notice of this Court in spite of the due diligence having been taken in the matter of making available the factual aspect of the relevant documents.

20. The position of law is well settled, as would appear from the reference of the judgment made hereinabove that the review of the judgment can only be made if the new fact has come which could not have been brought to the notice of the Court in spite of the due diligence, as has been held by the Hon’ble Apex Court in ***Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose (supra)***.

21. It is evident from the aforesaid judgment that the power of review can be exercised only the two folds ground, i.e., (i) if there is any error apparent on the face of the order; or (ii) the fact which could not have been brought to the notice of the court in spite of the due diligence having been taken by the concerned party.

22. Further, law is well settled that a review petition, has a limited purpose and cannot be allowed to be “an appeal in disguise”, as has been settled by the Hon’ble Apex Court in the case of ***Parsion Devi v. Sumitri Devi (1997) 8 SCC 715***, for ready reference the relevant paragraph of the aforesaid judgment is quoted as under:

“Under Order 47 Rule 1CPC 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 Order 47 Rule 1CPC. In exercise of the jurisdiction under Order 47 Rule 1CPC 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.”

23. Similarly, in ***S. Murali Sundaram Versus Jothibai Kannan and Others 2023 SCC OnLine SC 185*** the Hon’ble Apex Court observed as under:

“15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of Perry Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the

controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error 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 the points where there may conceivably be two opinions. (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits. (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate. (v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

24. Review can also be sought when the order discloses some error apparent on the face of record or on grounds analogous thereto. These are all grounds which find mention in various judicial pronouncements right from the earliest time as well as in the Rules of Order 47 of the Civil Procedure Code as permissible grounds of review.

25. The term “mistake or error apparent” by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error

apparent on the face of the record for the purpose of Order 47 Rule 1 CPC.

26. Under Order 47 Rule 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 Order 47 Rule 1 CPC.

27. In the very recent judgment in the case of **Sanjay Kumar Agarwal Vrs. State Tax Officer (1) & Anr., 2023 SCC OnLine SC 1406**, the Hon'ble Apex Court while interpreting the provision of Order 47 Rule 1 of the C.P.C. the proposition has been laid down to entertain the review, as has been held at paragraph 16.1 to 16.7, which reads as under:-

“16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. 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 record e justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.—"

28. Thus, on the basis of aforesaid discussion it is evident that while power of review may be inherent in the High Court to review its own order passed in a writ petition, the same has to be exercised on well-recognized and established grounds on which judicial orders are reviewed. For example, the power may be exercised on the discovery of some new and important matter or evidence which was not within the knowledge of the parties seeking review despite due exercise of diligence when the order was made.

29. The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of invoking the jurisdiction of review. Further 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.

30. It is evident from the law laid down by the Hon'ble Apex

Court that the parameters have been fixed in the recent judgment in the case of ***Sanjay Kumar Agarwal Vrs. State Tax Officer (1) & Anr. (supra)***, and in sum and substance, the power of review can only be exercised if there is error apparent on the face of order or the fact could not have been produced in spite of due diligence.

31. Adverting to the factual aspect of the present case by taking into consideration the ground, as has been agitated on behalf of the petitioner, we are now proceeding to examine as to whether, the same can be said to be a ground to exercise the power of review.

32. It is evident that review petitioner/writ petitioner had initially filed an Original Application bearing O.A. No. 48 of 2017 before the learned CAT at Ranchi *inter-alia* for issuance of direction upon the respondents to extend the benefit of alternative employment in terms of the Railway Circulars dated 24.09.1999, 7.08.2000 and 29.12.2000 to the petitioner at par with the same and similarly situated persons and for a direction upon the respondents to consider the case of the petitioner for his employment in alternative post for which he is medically fit and the respondents be directed not to discriminate the petitioner and to extend the same benefit of employment under the Railway Scheme at par with the other same and similarly situated persons.

33. Ground has been taken before the learned tribunal that the

petitioner is entitled for the same benefits of employment in alternative posts in terms of Railway Circulars/Uniform Policy decision referring the Full Bench judgement of the learned tribunal dated 10.7.2012 passed in O.A. No. 65 of 2010 as there was a specific direction that the benefit of the said Judgement extended to the candidates who were selected against the Notification dated 05.05.1998.

34. The learned Tribunal, vide order dated 23.05.2017, has dismissed his case holding applicant's/writ petitioner's O.A. is barred by limitation.

35. The petitioner, being aggrieved and dissatisfied with the order dated 23.05.2017 has moved before this Court by filing writ petition being W.P.(S) No. 6445 of 2017.

36. This Court, vide order dated 19.11.2024, after taking into consideration the factual aspect and applying the principle of fence sitter and further basing upon the delay and laches, has refused to interfere with the order dated 23.05.2017 passed by the learned Tribunal, against which, the instant review petition has been filed.

37. The learned counsel for the review petitioner has emphatically contended that when the benefit is based on the policy decision, the obligation casts upon the authority to extend the same benefits to all the similarly situated persons but having not done so, the order impugned suffers from an error.

38. It has further been contended that while dismissing the

writ petition, the judgement dated 05.01.2022 passed in W.P.:(S) No. 937 of 2014 by the Co-ordinate Bench has been referred but failed to consider para-3 of that judgement wherein referring the judgement passed in O.A. No. 65 of 2010 (F.B.) and the issue of applicability of the Railway Board's circular, policy decision, delay was condoned after referred the judgement of the Full Bench passed in O.A. No. 65 of 2010.

39. This Court, in the backdrop of the aforesaid settled basic principle of civil review and in order to ascertain that whether the aforesaid grounds raised by the learned counsel for the writ petitioner could not have been brought to the notice of the court in spite of the due diligence having been taken by the concerned party or any error apparent on record has gone through the order passed by the writ Court against which review has been sought for. For ready reference, the relevant paragraphs of the order of which review is being sought for, are being quoted herein:

“37. So far as the petitioner/applicant of writ petition being W.P.(S) 6445 of 2017 is concerned he is also one of the candidates, who was empaneled under Chakradharpur Division of Railways in terms of the Notification dated 5th May, 1998, but due to his medical unfitness in B-I Category, he was subjected to re-medical examination, but again declared medically unfit in that category.

38. There was a provision for alternative employment against next below medical category for which he is medically fit. The grievances were pending for long and therefore the applicant moved the learned CAT

citing different orders passed in different O.As. concerning different applicants, wherein the rejection orders were quashed and the respondents were directed to provide employment to those applicants in Group-D post which required only C-I Medical Standard next below B-I category Medical Standard in which they had failed.

39. The applicant claimed that he was also medically fit for C-I category and accordingly entitled for employment in any lower medical category of Group-D post pursuant to Railway's Board Circular.

40. Learned Tribunal considered the case of the parties, but in his case, took a different view and dismissed the original application holding as time barred and dismissed the same at the admission stage itself, against which the present writ petition has been filed.

41. Adverting to the facts of the instant case it is pleaded that petitioner in the month of September 2016 came to know that one Sri Chamepshwar Rajhans (petitioner of W.P.(S) 937 of 2015) had moved before Tribunal in OA no. 04 of 2014 for a direction to provide alternative employment in any Group 'D' post for which he is medically fit and his OA has been allowed vide an order dated 31st October, 2014 with a direction to provide him employment in alternative post in below Medical Grade at par with the similarly situated persons.

42. Accordingly, the petitioner/applicant has preferred the O.A being O.A. No. 051/800048/2017 with MA/051/00026/2017 for the similar relief and for the condonation of delay in filing the said O.A. But the said O.A was dismissed by the learned tribunal vide order dated 23.05.2017.

43. It is further pleaded that apart from the above, as many as about 18 to 20 OAs have been allowed in between the period 2009 to 2013 in terms of the order dated 5th December, 2008 and alternative employment have been provided to all such medically

unfit candidates who applied against the notification dated 05.05.1998 and in all such cases either delay have been condoned/ignored or never raised by the respondents.

44. It is contended by the learned counsel for the petitioner that the petitioner's case is squarely covered by the decision dated 31.10.2016 passed in OA no. 04 of 2014 (Champeshwar Rajhans Vs Union and India and others). Both the petitioner and applicants of the said OA were appointed against the notification dated 05.05.1998 and were declared medically unfit in B-1 category and now Champeshwar Rajhans has been provided employment, as such this petitioner is entitled for the same benefit after condoning the delay.

45. The learned counsel for the petitioner has further submitted that the similar points were raised in OA no. 65 of 2010 and that OA was referred before the Full Bench due to dissenting opinion between the two members of the Division Bench, and the learned Full Bench of the Tribunal vide a detailed order dated 10.07.2012 disposed of said O.A with a direction to the respondents to extend the same benefits to the similarly placed persons subject to outcome the decision of the in W.P (S) No. 2259 of 2009, however, it was made clear that the order is restricted only to the candidates selected against the Notification dated 05.05.1998.-----

46. In the aforesaid context we are now revisiting the facts of the instant case and after perusal it appears that it is the admitted case the present petitioner that he has preferred the O.A. in year 2017 when the order in the O.A being OA No. 04 of 2014 was passed by the learned tribunal whereby the relief was granted to the similarly placed applicant namely Champeshwar Rajhans.

47. The learned tribunal after taking into consideration of the long delay in filing the application had dismissed the said O.A being O.A. No.

051/800048/2017 with MA/051/00026/2017 on the ground of delay at the admission stage itself without entering into the merit of the case.

48. At this juncture we would like to refer the settled position of law that the principle of fence sitter can be made applicable when there is delay and laches on the part of the concerned employee.

50. Thus, it is evident from the aforesaid settled position of law that when a person who is not vigilant of his rights and acquiesces into the situation, his grievance cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their cause.

51. Further it is admitted facts that the petitioner/applicant has approached the tribunal and authority concerned after 16 years for redressal of his grievances merely on the ground that he came to know about the order of learned tribunal passed in the O.A being OA No. 04 of 2014 whereby the relief was granted to the similarly placed applicant namely Champeshwar Rajhans, therefore this ground as taken by the petitioner is not said to be sufficient ground in condoning the delay in the light of the settled position of law as rendered by the Hon'ble Apex Court in the case of State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others (supra).

52. The learned counsel has relied upon the order passed by the learned Full Bench of the Tribunal in OA no. 65 of 2010 wherein vide order dated 10.07.2012 a direction was passed to the respondents to extend the same benefits to the similarly placed persons subject to outcome the decision of the in W.P (S) No. 2259 of 2009 and further ordered that the order is restricted only to the candidates selected against the Notification dated 05.05.1998. The learned counsel contended that this

is a judgment in rem and, therefore, the applicant is entitled to similar relief.

53. It is admitted fact that the applicant has approached the tribunal inordinate delay of 16 years and the applicant has been in deep slumber and has never approached any forum for more than 16 years for his relief. The judgment made by the Full Bench of the tribunal is not a judgment in rem and the ground of recent knowledge of the relief granted in similar cases is not acceptable in terms of the aforesaid settled position of law particularly the judgment rendered by the Hon'ble Apex Court in the case of State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others.

54. The case of the petitioner/applicant is fit to be considered in the light of the judgment passed by the co-ordinate Bench of this Court in W.P.(S) No. 937 of 2015 wherein consideration has been given that the case of the respondent of the said case should not be treated as precedent for other such persons approaching the court after a prolonged delay.

55. However, we have considered the case of the respondents/applicants as above who are the respondents of W.P.(S) No. 2207 of 2009 and W.P.(S) No. 2259 of 2009 by taking into consideration the fact that they were before the Court of Law since the year 2006 and 2008 respectively while the petitioner of W.P.(S) No. 6445 of 2017 has approached the Tribunal only in the year 2017 after the order having been passed by the learned Tribunal in O.A. No. 04 of 2014.

56. Hence, applying the principle of fence sitter and basing upon the delay and laches, this Court is of the view that the order passed by the learned Tribunal is not amenable to be interfered with in exercise of power of judicial review under the power conferred under Article 226 of the Constitution of India.

57. Accordingly, the writ petition being W.P.(S) No. 6445 of 2017 is hereby dismissed."

40. It is evident from perusal of paragraph-52 of the order of writ Court as quoted hereinabove that learned counsel for the writ petitioner (herein review petitioner) has relied upon the order passed by the learned Full Bench of the Tribunal in O.A. No.65 of 2010 wherein vide order dated 10.07.2012 a direction was passed to the respondents to extend the same benefits to the similarly placed persons subject to outcome of the decision of W.P (S) No. 2259 of 2009, with a further direction that the order is restricted only to the candidates selected against the Notification dated 05.05.1998 and by referring the aforesaid order, the learned counsel for the writ petitioner has contended that since the aforesaid judgment/order, i.e., OA No. 65 of 2010 is judgment in rem, therefore, the applicant is entitled to get the similar relief.

41. The writ Court, while appreciating the aforesaid contention of the learned counsel for the petitioner in paragraph-53 of the order, has observed that the applicant has approached the tribunal after inordinate delay of 16 years and the applicant has been in deep slumber and has never approached any forum for more than 16 years for his relief. It has further been observed that the judgment made by the Full Bench of the tribunal is not a judgment in rem and the ground of recent knowledge of the relief granted in similar cases is not acceptable in terms of the aforesaid settled position of law particularly the judgment rendered by the Hon'ble Apex Court

in the case of ***State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others (supra)***.

42. Thus, from the aforesaid discussion, it is apparent that the learned writ Court while negating the claim of the writ petitioner has already taken into consideration the ground/contention, which has been raised by the learned counsel for the review petitioner herein.

43. So far as the other contention of the learned counsel for petitioner about no proper consideration of judgment passed in W.P.(S) No. 937 of 2015 is concerned, is not fit to be accepted, reason being that, from perusal paragraph-54 of the order of writ Court, it would be evident that judgment passed by the co-ordinate Bench of this Court in W.P.(S) No. 937 of 2015 has also been taken into consideration by the writ Court and further from paragraph-55 of the order of writ Court, it is apparent that the Court has also taken into consideration the fact that the respondents of W.P.(S) No. 2207 of 2009 and W.P.(S) No. 2259 of 2009 were before the Court of Law since the year 2006 and 2008 respectively but the writ petitioner of the instant case has approached the Tribunal in the year 2017 after the order having been passed by the learned Tribunal in O.A. No. 04 of 2014 and based upon the aforesaid consideration, the writ Court has negated the claim of the writ petitioner/review petitioner.

44. This Court, therefore, applying the principle upon which the power of review is to be exercised, is of the view that the

ground as has been raised cannot be a ground for review, since, the said ground has already been taken into consideration by the Writ Court.

45. So far, the question of applicability of the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India and Anr. Vs. S.K. Murti*** in the present facts and circumstances of the instant is concerned, is also not fit to be accepted.

46. From the perusal from the aforesaid judgment, it is evident that the Hon'ble Apex Court has observed that scientists under the Flexible Complementing Scheme (FCS) are entitled to promotion from the date they become eligible, not from the date of the assessment board, if the delay is due to administrative inaction. This established that retrospective promotions are valid if vacancies existed during the eligibility period.

47. Thus, it is evident that the Hon'ble Apex Court has held that the administrative delay in constituting a Review Committee cannot penalize a scientist who has completed the required residency period and met eligibility criteria but herein the it is not the situation, rather, the petitioner himself approached the Tribunal in the year 2017 after the order having been passed by the learned Tribunal in O.A. No. 04 of 2014, therefore, the writ Court while applying the principle of fence sitter and basing upon the delay and laches has refused

to interfere with the order passed by the learned tribunal.

48. Further, it is settled position of law that the applicability of the judgment depends upon the facts and circumstances of each and every case and there cannot be any universal application of the judgment rather each judgment is to be decided on the basis of fact of each case. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in ***Dr. Subramanian Swamy vs. State of Tamil Nadu & Ors*** reported in ***(2014) 5 SCC 75***, for ready reference, the relevant paragraph of the aforesaid judgment, is being quoted as under :

"47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."

49. On the basis of discussion made hereinabove and further this Court, on consideration of the ground for review, as has been agitated by the learned counsel for the review petitioner, is of the view that all the grounds which have been raised by the learned counsel for the petitioner have already been considered by this Court exhaustively and no new thing has been brought said to attract the principle of error apparent on the face of record or anything could have been brought to the notice of the Court in spite of due diligence.

50. This Court, therefore, is of the view that the fact of the present case so far as exercising the power of review is concerned, is not coming under the law laid down by way of formulating the parameters as in the case of ***Sanjay Kumar Agarwal Vrs. State Tax Officer (1) & Anr. (supra)*** and other cases, which have already been referred in preceding paragraphs, hence, it is not a case where the power of review is to be exercised.

51. In the result, the instant review petition fails and is, dismissed.

52. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

16.03.2026

Rohit/**A.F.R.**

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