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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Review Application No.369/2003

in

Original Application No.1056/2002

New Delhi, this the 8th day of July, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

H.D. Sharma
S/o Shri R.S. Sharma
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New Delhi - 110 017.

(Through Shri U.K. Shandilya, Advocate) ... Applicant

(By Advocate: Sh. U.K. Shandilya)

Versus

Union of India & Others.

.. Respondents

(By Advocate: Sh. N.S.Mehta)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant had preferred OA No.1056/2002. It was heard and thereafter dismissed on 25.7.2003. The applicant was seeking a direction for setting aside of the impugned orders and that he should be considered for promotion to the post of Additional Central Provident Fund Commissioner from 6.4.2000. This Tribunal had considered the same and dismissed the application.

2. The applicant now seeks review of the said order. Along with the Review Application, an MA has been filed seeking condonation of delay in this regard.



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3. At this stage it is worth mentioning that the Original Application was dismissed holding:

"11. We find on examination of the issues that the applicant has no case. As correctly pointed out by the learned counsel for the respondents, the applicant's right is not for promotion but only for his being considered for promotion, if he is in the consideration zone. The averment of the respondents makes it clear that the applicant's case had been considered not once but thrice, but keeping in mind his service record he had not been recommended for adhoc promotion. As pointed out by the Hon'ble Supreme Court in the case of **Shankarshan Dash and Maji Jangammayya (supra)** it is for the competent authority to decide as to whether all or any of the vacancies in any post should be filled or not. The applicant could not have had any case against the promotion of Kalyan Chand and A.N.Sharma his natural seniors. He, however, had such right with the promotions of Kalyan Chand and A.N.Sharma his natural seniors. He, however, had such right with the promotions of M.L.Meena and S.K.Khanna, his junior but it is brought on record that his promotion could not be ordered as the applicant was not found suitable for ad hoc promotion on account of pending CBI proceedings wherein a decision was taken to issue a charge-sheet, keeping in mind, the directions of the Hon'ble Supreme Court in the case of **DDA vs. Khurana (supra)**. The chargesheet in the said case had since been issued and, therefore he could not have claimed that he should have been promoted. As vacancies existed in the cadre which could not be filled up even by ad hoc promotion, the respondents had brought in R.K.Mahajan and Dr. (Mrs.) Satbir Silas, in tune with the RRs. It definitely is not for the applicant to call in question the policy adopted by the respondents to fill up the vacancies by the deputationists as is provided for in the RRs, when eligible persons were either not available or those who were available were not found fit for promotion."

4. The Review Application is being contested.

As Ag —————

(26) (31)

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5. So far as the question of condonation of delay in filing of the present application is concerned, the applicant contends that after the OA was dismissed, he preferred Civil Writ Petition No.7048/2003 in the Delhi High Court. It came up for hearing before the Delhi High Court on 05.11.2003, wherein, permission as claimed by the petitioner was granted to withdraw the CWP with liberty to move a Review Application before this Tribunal. The application is stated to have been filed within one month of that order. It is in these circumstances claimed that the delay may be condoned.


6. In our considered opinion, once the matter was with the Delhi High Court and they permitted to file a Review Application because according to the applicant some factual mistakes had occurred, it is not the case where the applicant can be held to have dealt with the matter casually. He was pursuing with due diligence and it is after the order of the Delhi High Court that he had filed the application. We, therefore, condone the delay.

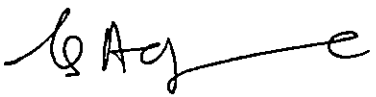
7. Reverting back to the merits of the matter, we have already reproduced above the operative part of the order passed by this Tribunal. According to the learned counsel, the charge-sheet had been served after the Departmental Promotion Committee Meeting. He contends that on 21.8.2001/22.8.2001, promotions were approved and orders were issued. At that time, there was nothing adverse against the applicant. This fact had escaped the notice. It is, therefore, patent that there is an error apparent on the face of the record. The matter may require reconsideration.

/s/ Ag e

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8. Resultantly, we allow the Review Application and recall the impugned order passed by this Tribunal. The OA be listed for regular hearing in its turn.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/

MA-1495/95 for
Amendment of
or