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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA No.292/2003
In
CP No.391/2001
In
OA No.531/1998

New Delhi this the 3rd day of November, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Suresh Kumar,
S/o Sh. Ram Gopal,
R/o 163, Harsardeep Colony,
Fatehpur Beri,
New Delhi.

-Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Shri J.N. Bhawani Prashad,
Director General of Works,
C.P.W.D., Nirman Bhawan,
New Delhi.
2. The Chief Secretary,
Govt. of N.C.T. of Delhi,
5, Sham Nath Marg,
Delhi.
3. Shri T.T. Joseph,
the Secretary,
Public Works Department (PWD),
Vikas Bhawan, I.T.O.,
New Delhi.

-Respondents

(By Advocate Shri Vijay Pandita)

ORDER

Mr. Shanker Raju, Member (J)

This R.A. filed by applicant in the OA is directed against an order passed in CP-391/2001 on 22.8.2002, dismissing the CP.

2. Earlier applicant had approached this Court seeking regularisation as Motor Lorry Driver (MLD) and payment of

difference of wages working as Driver. The OA was dismissed, which led to filing of CWP No.924/1999 before the High Court of Delhi. By an order dated 4.3.1999 the High Court remanded back the case to implead PW as a party, which was accordingly complied with.

3. By an order dated 18.12.2000 a Single Bench of this Court directed respondents to pay difference in salary and also accorded consideration for promotion to the post of MLD in accordance with recruitment rules applicable to applicant.

4. Applicant who was earlier appointed as Beldar in CPWD on 23.6.93 had passed the trade test of MLD on 26.3.93 and on the request of Superintending Engineer, PWD he was posted in PWD to drive Staff Car till regular Driver is posted. Subsequently, in 2000 he was repatriated back to CPWD.

5. When the directions of this Court were not complied with, CP-391/2001 was filed. Taking cognizance of the recruitment rules for MLD in CPWD where only khalasi with 10 years service is eligible for consideration for promotion as MLD, finding no disobedience CP was dismissed.

6. Learned counsel for review applicant Sh. Shyam Babu contended that the recruitment rules produced by him before the Tribunal pertained to PWD, where applicant was regularly posted, as such recruitment rules prescribe Group 'D' employee as feeder category for the post of Driver (light motor vehicle) and accordingly non-consideration of his case was a willful contempt but the

Tribunal in a Division Bench put aside the directions and found no contempt which is an error apparent on the face of the record. It is in this conspectus stated that applicant had been appointed since 1994 and has been continuing as MLD in PWD. The recruitment rules now applied to applicant are not applicable as he has been working as MLD in Land and Building Department recruitment rules of PWD are applicable. He further states that by an order dated 27.9.93 in CWP No.4037/2003 on challenge of Tribunal's orders petition was withdrawn with liberty to file present RA, which is within limitation.

7. On the other hand, respondents' counsel Shri Vijay Pandita contended that the directions by the Tribunal were to consider applicant for promotion as MLD in accordance with recruitment rules applicable to applicant. As applicant is a Beldar discharging functions of Staff Car Driver was initially appointed in CPWD and was on request sent to PWD, maintains a lien at CPWD. Accordingly PWD has written to the CPWD for his promotion. According to him there is no error apparent on the face of record and the error which requires long drawn process and scanning of record would not bring the review within the ambit of Section 22 (3)(f) of the Administrative Tribunals Act, 1985.

8. On careful consideration of the rival contentions it is trite law in the light of the decision of the Apex Court in **Smt. Meera Bhanja v. Nirmala Kumari Choudhury**, AIR 1995 SC 455 that an error is one which strikes on the face of it on mere looking at record but if it requires any long any long drawn process of reasoning and there are conceivably two opinions scanning and re-

appreciating of the entire evidence would be an act of appellate Court which is not the scope of review. In our considered view we are fortified by the decision of the Apex Court in **Union of India v. Tarit Ranjan Das**, 2004 (2) ATJ SC 190. Applicant who was initially engaged in CPWD had passed the trade test of motor driver and was requisitioned at PWD. Nothing material has come on record to establish that he was holding that post on regular basis. Accordingly he was sent back to CPWD and the fact that PWD had sent communications to CPWD for promotion of applicant his case for promotion would have to be governed under the rules applicable to him. However, we do not to divulge or adjudicate the merit of the case. If applicant is in any manner aggrieved with the action of the respondents that gives him a cause of action, which can be assailed in accordance with law.

9. In this view of the matter finding RA bereft of any merit, it is dismissed accordingly.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)
3/11/04

'San.'