

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

New Delhi, this the 20th day the day of Sept., 1995.

RA No. 239/95  
in  
OA No. 2083/94

Shri P. P. Neogi, EAD/AE,  
Central Water Commission  
Sewa Bhavan, R.K.Puram,  
New Delhi.

..... Applicant.

vs.

1. Union of India through  
Secretary to the Govt. of India,  
Ministry of Water Resources,  
Shram Shakti Bhavan,  
New Delhi.
2. The Chairman,  
Central Water Commission,  
Sewa Bhavan, R.K.Puram,  
New Delhi.

..... Respondents.

Order by Hon'ble Mr. B.K. Singh, M(A)

By Circulation

This Review Application No. 239 of 1995 has been filed against the judgment and order in O.A. No. 2083 of 1994. The judgment was delivered on 28th July, 1995. In the review application, the learned counsel for the applicant has stated that there are a number of errors apparent on the facts and law. In para 3 of the application, it has been stated that the case of the applicant was recommended but there has been no response from the Chairman, Central Water Commission (CWC). It has been further stated that the correct position is that C.W.C. recommended the case of the applicant for fixation of pay at par with the junior on the basis of <sup>a</sup> number of judgments (numbering about 20) delivered by different Benches of the Tribunal. This position, as explained in the review application is not factually correct in the sense that the very impugned order is directed against the rejection of the representation by the Chairman of the C.W.C. as would be evident from page

10(Annexure-I) enclosed with the O.A. This is addressed to the Chairman, Central Water Commission, Sewa Bhawan, New Delhi and in this, the applicant has himself stated that he regretted to note that his request for stepping up of pay has not been acceded to. Thus, there is no error because even after this refusal/rejection by the Chairman, several other representations were filed for re-fixation of pay and why the stepping was not allowed is also contained in the memorandum enclosed with the letter dated 10th June, 1992, which has been issued to the applicant by the Under Secretary(ES) from his R.K. Puram office. Thus, the error pointed out is mis-placed. There is no error since the rejection has been from the C.W.C. which has been impugned in the O.A. Thus, the so-called error pointed out by the learned counsel is not factually correct. The memorandum also mentions the case of Shri B.N. Ghosh and distinguishes the case of the applicant from that of Shri B.N. Ghosh and Rajeshwar Shah. The applicant was divested of his adhoc promotion while proceeding on deputation and his juniors continued to work against the promotional post although on adhoc basis and earned increments and, therefore, the applicant could not claim the benefit of these increments earned by the juniors while he was on deputation drawing his basic pay(+) deputation allowance and other perks attached to the post on deputation.

The bunch of judgments filed by him will have no application because the memorandum issued on 4.11.1993 by D.O.P.T. is admittedly a clarification to the memoranda issued by DOPT and this clarification was issued because it was felt that rules were

not being interpreted correctly by various Benches of the Tribunal and it is admitted that it is a clarification in para 11 of the review application. It is wrong to say that when a clarification is issued it does not have a statutory force. Any instruction or clarification issued in regard to a previous memorandum acquires the statutory force, as has been held by the Hon'ble Supreme Court in case of K. K. Bevin Katti vs. Karnataka Public Service Commission. It lays down the law that where Government instructions/clarifications are issued to supplement the instructions contained in a memorandum, the clarifications/instructions issued subsequently acquire the force of a statute (See: AIR 1990 SC 1233). These clarifications, which have a mandatory force alone, demolish the judgments decided by the various Benches of the Tribunal and as such the question of discussing each one of them does not arise. The whole controversy was re-cast in the form of question and answer, which is contained at pages 4 and 5 of the judgment. It is not the case of anomaly in pay fixation vis-a-vis the juniors and, therefore, this case is not covered under Section 20-C of Fundamental Rules. It was further held in the judgment that the applicant, on his own volition, had gone on deputation and got higher emoluments in the form of deputation allowance and other perks and privileges and he also earned increments in his substantive post which he was holding while going on deputation. He was divested of his officiating promotion is an admitted fact. There was no regular promotion of the juniors and so proforma promotion was not given to

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to him. His seniority remains intact.

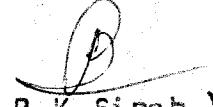
A clarificatory O.M. was issued by the D.O.P.T. on 4.11.1993 and the instructions contained in this Memorandum are under challenge before the Tribunal and as such these clarifications would have an impact on the applicant also. This only clarified the instructions issued earlier. The only point that has been raised by the applicant is that it does not have the force of a statute. It is not correct, as stated above. Any clarification or instruction issued to supplement a previous O.M. which is mandatory also acquires the force of a statute as held by the Hon'ble Supreme Court in the ruling cited above.

The review application in order to succeed has to fall within the four corners of Order 47 Rule 1 CPC, which lays down that the review applicant has come in possession of a new document or a piece of evidence, which, inspite of due diligence was not available with him at the time of hearing or when the order was made. No new evidence or document has been produced to warrant review of the judgment dated 28.7.1995. As pointed out above, there is no error, legal or factual manifest on the face of record and the error pointed, as stated above, is mis-placed since the letter at Annexure-I is addressed to the Chairman and is directed against the rejection of the representation by the Chairman and alongwith it is also enclosed a memorandum indicating the reasons why his case for re-fixation has not been considered.

There is no legal error apparent on the face of the record since the O.M. dated 4.11.1993 clearly militates against the claim of the applicant for re-fixation. There is no other cogent and substantial

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reason warranting a review of the judgment delivered in O.A. No. 2083 of 1994 on 28.7.1995 and accordingly, the review application is summarily rejected under Order 47 Rule 4(1) of the Code of Civil Procedure.

  
( B.K. Singh )  
Member (A)

/sds/