

42

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-330/2010
MA-3227/2010
MA-3228/2010
OA-1471/1995**

New Delhi this the 24th day of February, 2011.

**Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Dr. A.K. Mishra, Member (A)**

Sh. M.B. Usgaonkar,
G-303/304, Devashri Bhavan,
Porvorim, Goa.

.... Applicant

(through Sh. Robin for Sh. M.K.S. Menon, Advocate)

Versus

1. Union of India through
the Secretary,
Deptt. of Personnel & Training,
Ministry of Personnel,
Public Grievances & Pension,
North Block, New Delhi-1.

2. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi-1.

3. The Chairman, Rs
S.S.S.D.C.,
A-Wing, Sena Bhawan,
New Delhi.

.... Respondents

ORDER

Dr. A.K. Mishra, Member (A)

This is an application for recall on review of the order dated
28.04.1997 in OA-1471/1995 in which out of two reliefs sought for,
one relief was allowed in full and the second relief was partially



allowed only in monetary terms by way of compensation but the higher pay scale, which was claimed on regular basis, was denied to him.

2. In the application itself a prayer has been made to condone the long delay in filing this application which, according to the applicant was caused due to delay in receipt of relevant documents under RTI Act. The preliminary objection of limitation was taken up first and the learned counsel for the applicant was asked to clarify as to what documents relevant to the OA were not in the possession of the applicant even after due diligence made by him at the time of filing of the OA, which were made available to him after lapse of all these years. He tried to explain that the only ground on which regular pay scale of the post of Chairman, SSSDC was not granted to him was that it was an Additional Secretary level post and the applicant was allowed to hold routine charge of the responsibilities of the post of Chairman and he would like to establish that the applicant was exercising substantial powers of the Chairman by referring to the order of appointment. When it was pointed out that a copy of the original order appointing him to look after the duties of the office of Chairman additionally was available to him, and when asked what other documents he was looking for to substantiate his claim, there was no convincing reply. As a matter of fact, we find that this order of appointment had been noticed by this Tribunal at paragraph-8 in the impugned order dated 28.04.1997 in OA-1471/1995. No other



document relevant to the issue about his discharging the duties of Chairman SSSDC, which were not in his possession, or which he could not get on due diligence have been filed in the present review application.

2.1 The contention that the applicant got useful documents through application under RTI Act, which came to his hand only in the year 2005 does not bear scrutiny from the additional documents filed. We find that Annexure-VA (page-65) is the only information which was supplied to him by the Ministry of Personnel, Public Grievances and Pension on 06.03.2009 under RTI Act and filed with this Review Application. This letter does not throw any additional light on the issue of the nature of duties performed by him as the officiating Chairman.

2.2 It is seen that documents filed at Annexures-VIIA, B & C have some relevance about his duties performed as the acting Chairman: Annexure-VIIA is a copy dated 28.02.1992 conveying instructions issued by him as officiating Chairman; Annexure-VIIB is a copy of the Progress Report for the month of January, 1993 submitted by him to the Ministry of Defence; Annexure-VIIC is a copy of Standing Operating Procedure in respect of disposal of store items where the role of Chairman is laid down. All these documents were available to him when he filed OA-1471/1995.

2.3 Learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case **Sanjay Singh**



and Another Vs. U.P. Public Service Commission, Allahabad and Another, [(2007)3 SCC 720] in which it was held that a judgment of the Hon'ble Supreme Court could not be challenged under Article 32 yet it could be reviewed under Article 137 where violation of fundamental right is alleged and a challenge is made to the correctness of the 'ratio decidendi' of the earlier judgment provided that the case was not between the same parties and in respect of the same cause of action. Here, it is the same parties and the same cause of action which has been challenged in the present Review Application. The facts of this case are entirely different. As such, this judgment will not be of any help to the review applicant.

3. We find that the Tribunal had taken notice of the nature of duties performed by the applicant and allowed monetary benefits to him by way of pay as is applicable to a regular incumbent on the post of Chairman. At the same time, they also took notice of the fact that the post of Chairman is regularly to be held by an officer of the rank of Additional Secretary to Government of India and for the period the applicant was making claim for regular pay scale he was only in the rank of Joint Secretary. Taking all the facts into account, the following directions were given in the impugned order:-

"12. For the reasons stated above, we are inclined to allow the relief sought by the petitioner to the extent that even though the petitioner may not be entitled to scale of Rs. 7300/-, he would be entitled to a compensation for discharging the duties of the higher post which carried out the scale of 7300/-.



the respondents shall calculate the payment due on the basis of the scale of Rs. 7300/- after deducting the actual amount already paid to the petitioner, the remaining amount shall be paid to the petitioner as a compensation for the petitioner who had been discharging the duties of the post of Chairman, SSSDC. We make it clear that we do not intend to pass an order directing the respondents to grant the scale of Rs. 7300/- rather he will be entitled only to a 'compensation' which shall be calculated by the respondents as stated above....."

✓ 3.1 Most of the additional documents filed by the applicant pertain to the issue of his empanelment to the rank of Joint Secretary. Majority of the averments in this application also relate to that issue. It is not understood why the applicant has taken all these pains when this Tribunal itself had granted the relief and directed the respondents to pay him the pay scale of Rs. 5900-6700/- attached to the post of Member (Finance) which is also admissible to the officer of the rank of Joint Secretary from the date of his joining on the post of Member (Finance).

Q 3.2 The respondents had filed Writ Petition No. 4227/1997 against the order of the Tribunal, which was dismissed on 15.09.1999. A finality had been reached as far as the decision of this Tribunal was concerned. The applicant had not challenged this order either on his own or by contesting the claims of the respondents in the aforesaid Writ Petition before the Hon'ble High Court of Delhi. It is strange that he should file this Review Application when the matter was decided on merits and confirmed by the Hon'ble High Court of Delhi as far back as on 15.09.1997.


✓

4. The applicant has failed to justify the long delay in filing this review application. Rule 17(1) of the Central Administrative Tribunal (Procedure) Rules, 1987 reads as follows:-

"No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

In this case, the impugned order was passed on 28.04.1997; a certified copy of the order was made over to the applicant on 07.05.1997 and the limitation expired on 06.06.1997. The R.A. has been filed on 20.10.2010 after a delay of thirteen years four months and fourteen days. Besides, the matter attained a finality after the judgment and order dated 28.04.1997 in OA-1471/1995 was confirmed by the Hon'ble High Court and the Writ Petition filed against it by the respondents was dismissed on 15.09.1997. In that view of the matter, no Review Application is maintainable when the issue has been finally adjudicated upon and confirmed by the Hon'ble High Court.

5. No reasonable justification has been given for the delay in filing this review application. Therefore, it is dismissed as not maintainable both on merits and on the ground of limitation.


(Dr. A.K. Mishra)
Member (A)


(Mrs. Meera Chhibber)
Member (J)

/vv/