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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

RA 12/98

In

OA NO 882/94 with MA 143/98

New Delhi this the 26<sup>th</sup> day of May, 1998.

Hon'ble Sh. T N Bhat, Member (J)  
Hon'ble Sh. S P Biswas, Member (A)

(I,  
Union of India  
Represented through:  
Secretary,  
Department of Personnel and Training,  
New Delhi.

By Advocate: Shri V.S.R. Krishna.

APPLICANT.

V/S

Shri G.K. Dixit  
5, Kaka Nagar,  
New Delhi.

By Advocate: Sh. R K Khanna.

RESPONDENT

1. The Government of India,  
Ministry of Home Affairs  
through Director, CPS,  
North Block, New Delhi.

(II,  
✓ RA 13/98 IN  
OA 2453/93 with MA 144/98

Union of India  
Represented through:  
Secretary to the  
Government of India,  
Department of Personnel and Training  
New Delhi-110001.

By Advocate: Sh V.S.R. Krishna.

RESPONDENT

V/S

Sh. H.A. Arfi,  
S/O Sh. Anwar Ali,  
R/O 47/9, Rajpur Road,  
Delhi-110054

1. The Union Public Service Commission,  
through its Secretary,  
Dholpur House,  
New Delhi.

RESPONDENT IN OA

2. Secretary, Govt. of India  
Ministry of Home Affairs,  
Government of India,  
New Delhi.

By Advocate: Shri R K Khanna.

RESPONDENT IN OA

**ORDER**

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**Delivered By Shri T.N. Bhat, Member (J)**

The respondents in these review applications, namely, Shri G.K. Dixit and Shri H.A. Arfi had filed OAs, No.s 882/94 and 2453/93, respectively, in this Tribunal and both the OAs were disposed of by a common order on 3rd Oct, 97 with a direction to the respondents to treat the officiating period of appointment of both the petitioners in the aforesaid OAs in the cadre post/senior post from the date of inclusion of the names of the petitioners in the select list for the purpose of fixation of their seniority as well as the year of allotment. The respondent No.1 in the OAs, who is the Review Applicant in both these RAs, were given four weeks time from the date of receipt of the copy of the aforesaid common order to complete the process, and give the necessary relief to the petitioners in the OAs.

2. The respondent No 1 in the O.A. namely, Union of India through Secretary, Ministry of Home Affairs, is seeking review of the judgement order dated 3/10/97 as, according to the review applicant, the judgement order is not "in harmony with the settled law laid down by the Apex Court in the case of Syed Khalid Rizvi, (1994) 26 ATC 192."

3. We have heard the learned counsel for the parties at length and have also perused the relevant records. Both the petitioners in the OAs had claimed the benefit of officiation on equivalent cadre posts admissible under explanation (4) below Rule (3) (3) (b) of the IAS Seniority Rules of 1954. While the petitioner in OA 882/94 claimed seniority with effect from the date on which he started to perform the duties on an

IAS post viz, 22/5/85 and sought the year 1980 as the year of allotment, the petitioner in OA 2453/93 sought the benefit of his officiation as first Secretary in the Indian Embassy at Kuwait from 21/2/84 to June, 87.

4. On going through the judgement/order passed by the Tribunal we find that elaborate arguments had been advanced on both sides and after discussing the respective contentions of the parties the Tribunal gave its finding that the petitioners in the OAs were entitled to get the benefit of the periods of officiation from the dates when their names were included in the select list. The Tribunal relied upon the judgement of the Hon'ble Supreme Court in Union of India Vs. G.N. Tiwari, reported in 1986 (1) SCC 89 in which it was held that even though under the rules the Central Government's approval might be necessary for such appointments the continuous period of officiation in the cadre must be reckoned from the date of inclusion of the name of the officers in the select list. The learned counsel for the review applicant vehemently argues that according to the proviso to 1987 Rules, while assigning the year of allotment it must be ensured that the person does not supersede another person who is higher up in the select list or whose name has been included in the select list of an earlier year. He argues that if the benefit of continuous officiation is given to the respondent Shri G.K. Dixit two other persons, namely, Shri H.A. Arfi, the respondent in the other RA, and one Shri Chaman Lal would be adversely affected. This argument clearly appears to be an afterthought on the part of the review applicant, as it does not find a mention anywhere in the contents of the review applications.

5. The other point raised is that the judgement order of the Tribunal is against the principles laid down by the Apex Court in Syed Khalid Rizvi's case. The learned counsel tried to extensively quote from the observations of the Apex Court in Syed Khalid Rizvi's case in a bid to bring home the point, but we find that he has not been able to persuade us to take the view that there is any error apparent on the face of the record so far as the judgement of the Tribunal is concerned. As already mentioned, the Tribunal relied upon the judgement of the Apex Court in G.N. Tiwari (supra). This judgement has also been referred to and not dissented from or otherwise distinguished by the Apex Court in its judgement in Syed Khalid Rizvi's case. There is, no doubt, an observation made in para 20 of Syed Khalid Rizvi (supra) that in G.N. Tiwari's case no one was affected by the continuous officiation of non - cadre officer. But there is, no finding that the judgement in G.N. Tiwari's case was not good law. The Tribunal was, therefore, justified in placing reliance on the judgement in G.N. Tiwari. Here, we may mention that in the counter replies to the main O.A.s the present Review Applicant had also placed reliance on G.N. Tiwari. They cannot now be heard to say that the said judgement of the Apex Court had no application to the instant case.

6. We are further informed by the learned counsel for the respondents in the R.A.s that before Sh. Dixit, respondent was appointed to officiate on the post an offer had been made to Shri Chaman Lal but he had refused it. As regards the other person likely to be affected, namely, Sh. H.A. Arfi, he was the applicant in O.A. 2453/93 and is the respondent in one of these R.A.s. The correctness of these contentions is not disputed by the Review Applicant's counsel.

7. Even Assuming that in the facts and circumstances of the case the view canvassed by the learned counsel for the Review Applicant could also possibly be taken, this would not by itself be sufficient for us to exercise the powers of review, as in our considered view, it would not amount to an error apparent on the face of the record, nor do we find any other ground made out for exercising the powers of review in this case.

D 8. We further find that there is some delay on the part of the Review Applicant in filing these RAs. The judgement in the case was pronounced on 3rd Oct, 97. The learned counsel for the respondents in the RAs has drawn our attention to the fact that after the pronouncement of the judgement the respondents had obtained certified copies of the judgement and forwarded the same to the review applicant in both the cases on 7th Oct, 97. We also notice that the copy of the judgement was forwarded to the Review Applicant on 27th Oct, 97. Even so, the Review Applicant waited until the 15th of December, 97 before filing the Review Application, and that too not in accordance with the relevant rules. As many as 10 defects were observed by the Registry of the Tribunal and it was only in the first week of January that the said office objections were removed. The learned counsel for the respondents in the RAs has taken us through the so-called affidavit filed by the <sup>Review Applicant</sup> respondent dated 7/1/98 which also is not sworn and verified in accordance with the Rules. In reply, the learned counsel for the Review Applicant argues that according to the admission of the respondents themselves, made in their counter to the RAs, the copy of the order was received by the Review Applicant only on 14/11/97. We have carefully

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gone through the contents of para 4 of the counter filed by the respondents in the RAs and we find nothing therein to support the contention of the learned counsel for the applicant. All that is stated in para 4 of the counter is that even if the contention of the Review Applicant's that they received the copy of the order only on 14/11/97 be assumed to be correct, the review applica<sup>tions</sup>~~ns~~ are barred by time, having been filed on 15/12/97, when the period of limitation expired on 13/12/97. By no stretch of reasoning can this be considered to an admission made by the respondents in the RAs that the Review Applicants had in fact received copy of the judgement-order only on 17/11/97.

9. In view of what has been held and discussed above, we find no grounds to review the common judgement order dated 3/10/97. These R.A.s are accordingly dismissed.

(S.P. Biswas)  
Member (A)

(T.N. Bhat)  
Member (J)

VL

Attested  
 K. L. Choudhary  
 Co/Secy  
 26/5/98