

15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A. No. 233 of 1994 in
O.A. No. 331 of 1989

This 22nd day of July, 1994

Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman
Hon'ble Mr. B.K. Singh, Member (A)

Om Prakash Agnihotri,
37A/32-B, Madhu Nagar,
Agra (U.P)

..... Applicant

By Advocate: Shri B.B. Srivastava
VERSUS

Union of India, through:

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Director General of E.M.E.
Army Headquarters,
(EME Civil.)
D.H.Q., P.O., New Delhi.
3. The Commander,
Headquarters Technical Group,
EME (Estt.),
Delhi Cantt.

..... Respondents

By Advocate: None

O R D E R

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

This review application has been filed against the judgment and order dated 5th May 1994 in OA No. 331/89. The said OA was dismissed on grounds of merits as well as on ground of limitation.

2. The E.M.E., Agra was allotted five selection posts vide letter No. 20801/SG/EST dated 4.11.84 in the scale of 425-640 (pre-revised). This is an undisputed fact. It is also an uncontested fact that 4 posts were given to general category candidates and the fifth post was given to one Prem Chand Dagore against reserved vacancy for SC. It is also admitted that the said Dagore is junior to the applicant. It is also uncontested that review



Contd.....2/-

of the selection grade was due on 1.8.85 but could not be finalised till 31.7.85 when the five persons who were finally regularised in the selection grade, had been provisionally promoted to draw selection grade till the final re-view was done. It is also admitted that on 28.10.86 vide letter No. 20801/SG/EST, EME intimated that during review it was found that these personnel were not eligible for selection grade pay as personnel employed in lieu of combatants are not entitled for the same. The main contention of the learned counsel for the applicant during the course of arguments in the main OA was that selection is not promotion and as such reservation is not applicable whereas in Chapter 12 of the Brochure on reservation of SC and ST Sixth edition, page 192, (appointment of selection grade), it has been shown that selection grade constitutes promotion and hence the 40-Point roster system is applicable. In the light of the various orders and circulars of Headquarters, the applicant was denied selection grade and one post was reserved and Dagore was appointed against 40-Point Roster, although he was junior to the applicant.

3. It is a fact that the question of limitation was left open to be heard and decided at the time of final hearing in the main OA. The law on limitation has been fully explained by the Hon'ble Supreme Court in State of Punjab vs. Gurdev Singh (1991) 17 ATC 287 4 (SCC) 1. It lays down as follows:-

"The party aggrieved by an order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of the statutory time-limit the court cannot give the declaration sought for."

Contd.....3/-

4. It was in this context that Section 21 of the CAT Act 1985 was quoted in the said judgment. This position was further clarified by the Hon'ble Supreme Court in the case of Bhoop Singh vs. Union of India, JT (1992) (3) SC 322 that, "the cause of action has to be reckoned from the actual date of passing of final orders by the competent/appellate authority". This has further been upheld in the case of Ratan Chandra Samanta & Ors. vs. Union of India & Ors., JT 1993 (3) SC 418.

5. Thus, limitation is not a trifling matter and the Tribunal is not vested with wide powers as the Supreme Court for condoning the delay. The Tribunal is not vested with any inherent power of review. It exercises power of review under Order 47 Rule 1 read with Section 114 of the CPC and the review lies only when (i) there is a discovery of a new and important matter or evidence which after exercise of due diligence was not within the knowledge or could not be produced by either of the parties seeking the review at the time when the order was made; (ii) on account of some mistake or error apparent on the face of record staring one in the face without any effort to establish it; and (iii) for any other sufficient reason or analogous cause. The review application also can be moved by a third party which was a necessary party and was not impleaded as such and is adversely affected on account of the order and judgment given in the OA.

6. We have carefully gone through the review application and we have already stated that the ground on which the review is sought, does not fall within the four corners of Order 47 Rule 1 of the CPC. Order 47 Rule 4(i) lays down that if there is no sufficient ground for

Contd....4/-

review, the application shall be rejected. We do not find any ground for review of the judgement and order dated 5th May 1994 in OA No.331/1989. The review application is not permitted for any fresh hearing or for new averments or arguments. It is permitted only for correction of any alleged error, legal or factual, apparent on the face of the record. This RA does not fall within the parameters of Order 47 Rule 1 of CPC and as such is being dismissed through circulation.

(B.K. Singh)
Member (A)

(S.K. Dhaon)
Acting Chairman

vpc