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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

R.A. No.204 of 1995 in  
O.A. No. 1634 of 1989

Dated New Delhi, this 2nd day of August, 1995

Hon'ble Shri J. P. Sharma, Member (J)  
Hon'ble Shri B. K. Singh, Member (A)

Shri B. P. Srivastava  
S/o Shri Baldev Prasad Srivastava  
R/o K-43, Sector-XI  
Noida-201 301  
Dist. Ghaziabad (U.P.) ... Applicant  
By Advocates: Shri G. D. Gupta, Shri Animesh Kumar

versus

1. Union of India, through  
Secretary to the  
Government of India  
Ministry of Information &  
Broadcasting  
NEW DELHI.
2. The Director General  
All India Radio  
Akashwani Bhawan  
Parliament Street  
NEW DELHI. ... Respondents

JUDGEMENT (in circulation)

Shri B. K. Singh

This RA. No.204/95 has been filed in O.A. No.1634/89 decided on 5th May, 1995. The admitted facts in that case were that Shri B. P. Srivastava who had only three months to go, was not recommended for promotion to the post of Chief Engineer and was not promoted to that post on the basis of the decision of the A.C.C. The question whether a person is aggrieved by the decision of the A.C.C. and whether court sees that injustice has been done to an officer, the matter can be sent back to the A.C.C. for recording reasons why the applicant was not promoted and to consult U.P.S.C. again. This was the ratio of the judgement in case of UOI Vs N. P. Dhamania decided by a Division Bench of the Hon'ble Supreme Court which held the

view that the Tribunal exceeded its jurisdiction in ordering deemed promotion in case of Dhamania and the order was modified to the extent that the Tribunal can at best, refer it back to the A.C.C. to record its reasons and to consult U.P.S.C. again. It is true that the Tribunal, prior to this decision in case of N.P. Dhamania had granted in the case of Dorairaj and Anr.

It seems that the decision of the Full Bench of the Hon'ble Supreme Court in case of Dr H. Mukherjee Vs UOI & Ors. was not before Division Bench although this decision of an <sup>date</sup> was earlier than the decision given in case of <sup>N.P.</sup> Dhamania. In case of Dr Mukherjee, the Full Bench of the Hon'ble Supreme Court laid down the law that A.C.C. can accept or reject recommendation of U.P.S.C. or a selection meeting presided by a member of U.P.S.C. and it is not under any obligation to communicate its reason to the U.P.S.C. or the applicant. The Government and the U.P.S.C. are both accountable to both the Houses of the Parliament and when U.P.S.C. submits a report to the effect that in certain cases their recommendations were not accepted and <sup>communicates</sup> the same to the President for being placed before two houses of Parliament, the President after obtaining the reasons required to from the Government ~~is~~ place those reasons also before the two Houses of the Parliament. It was held that under Article 323 of the Constitution, the Government is required to place its reasons for non-acceptance of the

recommendations of U.P.S.C. before the two Houses of the Parliament. It would be enough if the Government records the reasons in the relevant file dealing with the subject of promotion why they did not choose to promote a few people. In case of B. P. Srivastava, the relevant A.C.C. file was produced before us and we perused the same. It is admitted that U.P.S.C. had sent the proposal for appointment of nine others to senior administrative grade of the Indian Broadcasting (Engineers) Service from junior administrative grade. The relevant file dealing with the orders of the A.C.C. clearly indicated that 12 out of 14 officers who were considered, were graded as "very good". The first 9 were proposed against 9 vacancies. Sl. Nos. 1, 3&7 were not approved because they had less than three months to retire from service. The 9 candidates were required to fill up 8 existing vacancies and 1 which was likely to arise on 31.1.88. It was seen from the A.C.C. file that Sl.No.1, B.P. Srivastava was graded as 'good' only. Thus in case of review applicant there were two reasons: first, that he had only three months to go and another that he was graded 'good' only. A.C.C., therefore, did not consider him fit for promotion and after going through the A.C.C. record, we find that the decision of the Hon'ble Supreme Court in case of Dr Mukherjee Vs UOI is relevant and it was not necessary to refer it back to the A.C.C. because the reasons had been recorded in the relevant file for not promoting Shri B. P. Srivastava. The Full Bench decision laid down the law:

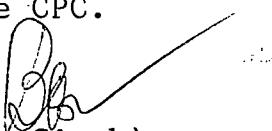
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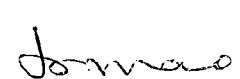
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discovery of a new and important matter or evidence which, after due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground, but it cannot be exercised on the ground that the decision was erroneous on merits. That would be the province of the Court of Appeal. A power of review is to be distinguished from appellate power which may enable an Appellate Court to correct errors factual or legal committed by a Subordinate Court as was held by the Hon'ble Supreme Court in the case of Aribam Tuleswar Sharma Vs Aribam Pishak Sharma & Ors. AIR 1979 SC.1047.

The learned counsel for the applicant has not been able to show discovery of any new and important matter or evidence warranting a review nor has he been able to show any error apparent on the face of the record as stated in the judgement. The orders in the case of Dorairaj & Anr. were passed before the cases of Dr Mukherjee or that of Dhamania had been decided by the Hon'ble Supreme Court and as such these judgements of the Tribunal cannot be a binding precedent in the light of the judgements of the Hon'ble Supreme Court in the two cases referred to in the judgement. The earlier /cannot be reviewed unless the Court is satisfied that material error

manifest on the face of the order, undermines its soundness or results in miscarriage of justice as was held by the Hon'ble Supreme Court in case of Col. Avtar Singh Sekhon Vs UOI & Ors. AIR 1980 SC.2041. Error of fact for being valid ground must be manifest and apparent on the face of the record. True, that review is not restricted to points of law and in some cases, even points of facts. But in the present Review Application, no factual or legal error is either manifest on the face of the record nor has it been shown by the Review Applicant. The Hon'ble Supreme Court has further held that the said error must also result in injustice as has been held in the case of Tukaram Nathuji Sankusare Vs Dayalnath Dudhanath Mishra AIR 1986 Bom. 109. There is no other sufficient reason to warrant a review of the order and judgement contained in O.A.No.1634/89 decided on 5th May, 1995. We do not find any sufficient ground for a review and the Review Application is summarily rejected under Order 47 Rule 4(1) of the CPC.

  
(B. K. Singh)  
Member(A)

  
(J. P. Sharma)  
Member(J)

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