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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

RA No. 85 of 96
in

OA No. 1745 of 90

New Delhi this the 2nd day of July, 96.

Hon'ble Shri A.V. Haridasan, Vice Chairman(J).
Hon'ble Shri R.K. Ahooja, Member(A).

L.M. Lakra,
S/o late Shri A.M. Lakhra,
R/o Qr. No. 231/24,
Chelmsford Road,
New Delhi.

...Applicant.

By Advocate Shri B.B. Raval.

Versus

1. Union of India through
The Secretary,
Ministry of Commerce,
Govt. of India,
Udyog Bhawan,
New Delhi.
2. The Secretary,
Department of Personnel & Training,
Government of India,
North Block,
New Delhi.
3. The Chief Controller of Imports
and Exports,
Government of India,
Udyog Bhawan,
New Delhi.

...Respondents.

O R D E R (By circulation)

Hon'ble Shri R.K. Ahooja, Member(A).

The applicant in this application seeks a review of the order passed by this Bench on 1.3.1996 whereby the application was dismissed. It is averred that there are certain errors apparent on the face of the record which would justify the recalling of the order passed. The first ground taken is that the plea of the applicant that the number of vacancies

2

in the 1987 DPC should have ^{included} ~~taken into account~~ the anticipated vacancies on account of the DPC for the higher grades, has not been considered in the impugned order. Secondly, it is claimed that the Tribunal fell into error in holding that even if the anticipated vacancies had been taken into account, the applicant could still not have made the grade. Thirdly, a plea has been made that the Tribunal did not appreciate the fact that Shri Sagua Lal whose case had also been kept in a sealed cover was exonerated much after the applicant, but yet he was promoted, while in the case of the applicant, the respondents had taken the plea that no post was available. Finally, the applicant submits that the Tribunal lost sight of the fact that the applicant belonged to the Scheduled Tribe category and that irrespective of his ranking in the panel, he was entitled to be considered for the post falling in the reserve category of Scheduled Tribe.

2. We have given careful consideration to the aforesaid submissions of the applicant. Under Order 47, Rule 1 of the Code of Civil Procedure, a review is to be made either in case of an error apparent on the face of the record or when there is discovery of new information/document which was not readily available at the time of hearing despite due diligence. Since there is no claim regarding any new information, we have to consider as to whether, as claimed by the applicant, there is any error apparent on the face of the record.

3. The applicant has quoted para 5 of the order of this Tribunal which observed that 15 officers were considered against the five vacancies for 1987. If there were five more vacancies, then the number of officers to be considered would have been correspondingly increased by another 15 and, therefore, the applicant could not have ~~been~~ automatically claimed promotion in the grading which he obtained. This observation was after the conclusion reached in para 4 of the order. In that, it was concluded that since the DPC for promotion from Grade-III to Grade-II had taken place on 21.12.1987 while the DPC for promotion from Grade-II to Grade-I took place only on 3.2.1988, the additional vacancies occurring for promotion from Grade-II to Grade-I could not be taken into account on 21.12.1987 as they could not be regarded as clear vacancies. The Tribunal was thus concerned with the actual position as regards the clear vacancies on 21.12.1987 when the applicant's name came up for consideration. Nothing new has been averred in the review application to show that this was not the position. What the applicant had claimed in the Original Application and now claiming in the review application is that the respondents should have proceeded with the DPC for various grades from top to bottom so that the bottom men could have obtained the maximum benefits. What is ^a ideal situation is one thing and what is ~~the~~ administrative position is another. The Tribunal's concern was whether the vacancies have been properly calculated for the DPC held on 21.12.1987 and it found it was so. There is nothing in the review

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application to show that it was otherwise since the DPC for the higher grades took place only on 3.2.1988. The observation in paragraph 5 of the order was only to show that the applicant could not claim to walk into a place ^{anymore} ~~in~~ the panel since ^{with} ~~the~~ more vacancies ~~in~~ the zone of consideration would have also been extended and other people whose case was not before the DPC would have also been considered. There is thus no patent error on the face of the record so far as the impugned order is concerned. What the applicant states is a ~~re-assertion~~ ^{re-assertion} of his argument made in the Original Application. The Tribunal had, in para 6 of its order, dealt with extensively regarding the promotion of Sagua Lal. It had noted that this officer had been considered for the 1986 vacancy. He was graded as 'Good' and as such could not be included in the panel. However, he was graded as 'Very Good' for the vacancies reported in the year 1987 and was included in the panel. The applicant, however, had been graded as 'Good' for the 1987 vacancies and had, therefore, not been recommended at all. As observed in para 7 of the order, Shri Sagua Lal had to be promoted on the opening of the sealed cover because he was in the panel but the applicant could not be promoted because it was found on opening of the sealed cover that he had not been included in the panel. The arguments advanced by the applicant in his O.A. and repeated again in the review application were fully dealt with. Here again it is a question of interpretation of the facts and not a matter of patent error.


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4. Finally, the applicant claims that the Tribunal did not appreciate the fact that he belonged to the category of Scheduled Tribe and, therefore, had to be considered separately from those who are in the general category. No such claim was made or such ground adduced in the Original Application. During the course of the arguments, it was mentioned by the learned counsel for the applicant that the DPC of 1987 had not graded the applicant as either unfit or not as yet fit, but had graded him as 'Good'. Therefore, had there been sufficient number of vacancies as claimed, there would have been a vacancy for Scheduled Tribe and, therefore, a grading of 'Good' would have entitled the applicant to be included in the panel. The Tribunal found no occasion to deal with this argument since not only it was ^{not} a part of the Original ^{Headings} Proceedings but further more, having decided that the DPC held on 21.12.1987 had correctly dealt with only the clear vacancies available, the situation, had there been additional vacancies, was entirely in the realm of surmise and conjecture and was, therefore, not relevant for the purposes of deciding the issues before it.


5. As would be clear from the discussions above, the grounds taken in the review application are by and large the same that were taken in the Original Application and constitute nothing but repetition of the arguments advanced therein. The same have been dealt with in the impugned order. There is no patent error on the face of the record. The applicant may well not be agreed with the observations

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and conclusion of the Tribunal but his remedy for the same does not lie in the review application. It only lies in another forum by way of an appeal. The review application being thus without merit and substance is dismissed.


(R.K. Ahooja)
Member(A)

25/96
'SRD'


(A.V. Haridasan)
Vice Chairman(J)