

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 16th day of NOVEMBER 2004.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman
Hon'ble Mr. D.R. Tiwari, Member (A).

Review Application no. 35 of 2004
in

Original Application no. 206 of 2002.

Union of India &
Others

... Respondent-Petitioner

By Adv : Sri D.C. Saxena

V E R S U S

Ataur Rehman Khan, S/o F. Rehman,
R/o 3/79 Khaivati Khan Masjid Bibi Sahaiba,
Nead Dargah Ali Shah Main,
Farrukhabad.

... Petitioner-Respondent

By Adv : Sri S. Singh

O R D E R

By Justice S.R. Singh, VC.

Heard Shri D.C. Saxena, learned counsel for the applicant-applicant in O.A. and Sri. S. Singh representing the original applicant-respondent herein.

2. The review petition seeks recall/review of order dated 25.02.2004, whereby the impugned order dated 24.09.2001 was set aside and the respondents were directed to re-fix the applicant's seniority granting all the benefits of ad-hoc service rendered by him with effect from the date of his initial appointment.

3. Sri D.C. Saxena, learned counsel for the department has urged that the applicant was not entitled to count adhoc-services for the determination of his seniority

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and the Tribunal, submits the learned counsel, has patiently urged in giving the benefits of ad-hoc services of the applicant for the purpose of determination of his seniority. Error on the facts situation of the case is manifest error, according to Sri D.C. Saxena, learned counsel for the applicant. Reliance has been placed on Santosh Kumar & Others Vs. G.R. Chawla and others, 2004 SCC (L&S) 329. In that case it was held that fortuitous appointments and appointment in the nature of stopgap could not account for the purpose of determination of seniority. The decision, in our opinion, is not ~~applicable~~^{applicable} to the facts of the present case. The respondents have been directed to count the ad-hoc services rendered by the applicant, having regard to the Railway Board's letter dated 14.4.1980 particularly in view of the absence of any 'statutory prohibition'. For similar reason, the other decisions in Davinder Bathia Vs. Union of India & Others, AIR 1998 SC 2098, relied on by the learned counsel for the applicant, Sri D.C. Saxena, has no application to the facts of the present case. Union of India & Others Vs. Ashwani Kumar (1993) 25 ATC 461; K.G. Derasari & Others Vs. Union of India & Others, 2002 SCC (L&S) 756; and The Selection Committee for Admission to the Medical and Dental College, Bangalore Vs. M.P. Nagaraj, AIR 1972 (Mysore) 44, relied on by the learned counsel for the applicant explain~~s~~ as to what is meant by mistake or error apparent on the face of record, which certainly may be a ground for review of an order.

4. The learned counsel for the applicant has not disputed the legal position ~~namely~~^{that} that the review is not an appeal in disguise and review application cannot

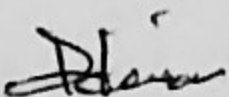
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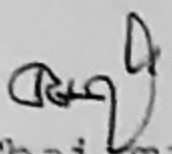
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be entertained, heard or dedided as ^{if} it is an original application. Learned counsel for the applicant then tried to argue that the Railway Board's letter, referred to, in ~~other~~ ^{our} judgments ⁱⁿ, had no application. This again cannot be considered in a review application.

5. Accordingly, the review application fails and dismissed.

6. There shall be no order as to costs.


Member A


Vice-Chairman

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