

(20)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

(THIS THE 20<sup>TH</sup> DAY OF AUGUST 2009)

PRESENT

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J  
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A

REVIEW APPLICATION NO. 60 OF 2005

IN

ORIGINAL APPLICATION NO. 722 of 1999.

(U/S 19, Administrative Tribunal Act, 1985)

Union of India through Secretary Ministry of Defence,  
Research & Development Organization, Directorate of  
Personnel New Delhi & others.

. . . . . Applicants

By Advocate : Shri P. Mathur

Versus

B.S Chauhan and one another. . . . . Respondents

By Advocates : Shri Ravi Prakash/Rahul Sripat

ORDER

(Delivered by: JUSTICE A.K. YOG - JUDICIAL MEMBER)

Review Petition was filed alongwith Delay Condonation Application in O.A. No.722 of 2009 seeking correction in final order dated 23.1.2005. Division Bench of this Tribunal issued notice and directed the Review Petition to be listed for hearing on 16.1.2007. Notices were issued to the Opposite Parties (Applicants in the O.A.) and opportunity

(Signature)

given to contest these application as is evident for Notes of Registry dated 25.9.2008/30.10.2008, 12/15.12.2008 and dated 8.7.2009. Opposite Parties have chosen not to file objection. Moreover, we find no basis on record to show names of Shri Ravi Prakash and Shri Rahul Sripat, Advocates. Court Officer also informs that there is no vakalatnama or memo of the aforesaid counsel on the record of O.A., but names of these counsel are shown (on counsel for the Applicant) in the 'cause list' of date (August 20, 2009); none of these counsel is present.

2. Shri P. Mathur, Advocate appearing on behalf of the Applicants (Respondents in the O.A.) refers to paras 3, 4, 5 and 6 of the Review Petition, which reads:-

"(3) *That a bare perusal of the order dated 25.01.2005 as referred to above would clearly reveal that Hon'ble Tribunal has disposed off the OA based on the statement made by the Govt. Counsel and not on the merit of the case. The applicants respondents through the counter affidavit and supplementary affidavit filed before Hon'ble Tribunal have submitted that S/Shri BS Chauhan and SS and CS Rawat, SSK were considered for promotion in the DPC held on 15 Oct 1992 and 15 Apr 93 for promotion to the grades of SSS and SS respectively. Though S/Shri BS Chauhan and CS Rawat were at Ser No. 1 and 2 respectively in the seniority lists in their respective grades, PDC recommended both these applicants as "NOT FIT" for promotion, because of the average ACR given to the applicants. On the basis of representations from the two applicants herein against their supersession the case was examined and IRDE, the zonal DPC Sectt, was advised to reconsider the earlier recommendations, in so far these related to promotion to the grade of Senior Stores Supdt and Stores Supdt. Accordingly a special Departmental Promotion Committee meeting was held on 15 Dec 93 to reconsider the earlier recommendations. The DPC went into the details of the ACRs of the applicants for the qualifying period of promotion and after deliberations with regard to the guidelines on the subject found that the two individuals were correctly graded 'NOT FIT' for promotion.*

(4) *That the respondents applicants admittedly were chargesheeted under Rule 14 of the CCS (CC&A) Rules, 1965 for major penalty vide chargesheet dated 06.04.1995 and prior to this, no DPC whatsoever had been convened. Their case for promotion in the DPC held on 15.04.2005, 15.10.96, 15.04.97, 15.04.98, 01.06.98 and*

15.10.98 were kept in sealed cover as per rules. It is only after exoneration from the charges vide letter dated 30.12.1998, a copy of which has been placed as an MA-I to this affidavit. The necessary benefits viz promotion and the consequential benefits had already been extended to the respondents applicants with effect from 15.04.1996. A true Photostate copy of the letter dated 21.06.1999 in this regard is enclosed herewith the present Misc. State Application and is marked as an ANNEXURE-MA-II to the present Misc. Stay Application.

- (5) That in view of the facts and circumstances stated and explained above, it is clear that inadvertently the statement has been made by the counsel for the applicants respondents as mentioned in the order dated 25.01.2005 filed as an Annexure-I to the affidavit of delay condonation application.
- (6) That from the submissions made above, it is clear that the statement as recorded by this Hon'ble Tribunal with respect to the grant of the benefits as prayed by the respondents applicants should be applicable only with effect from 1996 and not from 1992 as mentioned in the order judgement dated 25.01.2005 passed by this Hon'ble Tribunal and as such it would be expedient in the interest of justice that the operation of the order and judgment dated 25.01.2005 (Annexure-I to the affidavit of delay condonation application be stayed during the pendency of the present Review Petition".

3. It is well settled that no advantage can be taken by any party out of 'mistake' on the part of 'counsel/Court'.

Applicants were found 'Not Fit' in the year 1992 by the D.PC- as the fact stated in the review petition and not disputed/denied. From perusal of the averments in the aforequoted paras of the Review Petition, it is found that the applicants have been extended benefit of 'deemed promotion' w.e.f 15.4.1996.

4. It is clear that 'the direction' contained in the Tribunal order dated 23.1.2005- "...to consider for grant of notional promotion to the applicants as prayed by them w.e.f. 1992....." has crept into the order due to misapprehension/mistake committed by the Counsel representing the Department.

(b)

(23)

5. In view of the above, order dated 23.1.2005 is accordingly corrected. The words and figures 'October 1992' is being deleted and in its place 'April 15, 1996' are substituted. Original Order is corrected today. Application is allowed.

*Manish*  
Member (A)

*R.K. FF*  
Member (J)

Manish/-