

(By Circulation)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad This the 30<sup>th</sup> day of April 2003.

Review Application No. 8/2003 in original Application No.192/94

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J.

Ashiq Ali Khan

.....Applicant.

V E R S U S

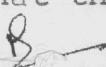
Union of India & Others

.....Respondents.

O R D E R

This Review application has been filed by the applicant against the judgment and order dated 13.12.2002 passed in O.A. 192/94. The O.A. was allowed partly by holding as under :

"The order dated 1.8.91 confined to the applicant was quashed and set-aside by which the applicant was said to retire on 30.11.1993. It was further held that the applicant would be deemed to be in service till 28.2.1996 for all other purposes namely for grant of dry increment and counting it as qualifying service, but he would not be entitled to salary for the period from December'93 to February'96." This Review application has been filed against the portion of the judgment by which the applicant has been denied the backwages. Review Application has been filed on the ground that the counsel for the applicant was not present on the day when the case was decided, therefore, he could not assist the court by giving ~~a~~ judgment on the point that in a situation where the applicant was willing to work and he was not allowed by the respondents, 'principle of no work no pay' would not apply. He has also submitted that since there is a mistake in the judgment in not awarding the backwages, he has filed the present Review application, so that the mistake could be corrected.



2. I have read the Review application carefully. The applicant's counsel has tried to suggest that the judgment suffers from the mistake, but the scope of review is very limited inasmuch as Review application cannot be filed either to re-argue the case or on the ground that the counsel was not available when the case was decided. In the case of Ajit Kumar Rath vs. State of Orissa, the Hon'ble Supreme Court has held that review cannot be claimed or asked for merely ~~for~~ a fresh hearing or arguments or correction of an erroneous view taken earlier (2000 SCC (L&S) 192). It is also a settled law that simply because the advocate was not present, it cannot be a ground to file review. If the applicant feels that the judgment given by the Tribunal is wrong, his remedy lies in challenging the same before the higher court. In the instant case, it is not a case where the points raised were not considered. para 13 of the order would show that while passing the final order a conscious view was taken by the Tribunal as to what relief should be given to the applicant. The backwages was denied to the applicant as he had filed the O.A. only in the year 1994 i.e. after he was retired w.e.f. 30.11.93. Admittedly, the applicant had came to know that his date of birth had been recorded as 25.11.1935 in the year 1991, which according to him, was wrong. If he was really keen to get his date of birth altered, he should have approached the court well in time that is immediately after coming to know about the said date of birth in the year 1991 itself. *Q moment.* The applicant, however, kept waiting till the last moment and filed the present O.A. only in the year 1994 after he stood retired, therefore, it is not open to him to suggest that he was willing to work and the respondents did not permit him to work. I had taken a conscious view in denying him back wages keeping in view the above facts and once I have expressed my views in the judgment, I cannot sit on appeal over my own order. It also cannot be

said to be an error apparent on the face of the record. It is true that in some of the cases as referred to by the applicant's counsel, the Hon'ble Supreme Court had granted back wages also to the person concerned, but each case would depend on the given facts of the case, ~~and that~~ <sup>R from B</sup> the ultimate relief also differs case to case. In my considered view, applicant's counsel has not been able to point-out any error apparent on the face of the record. On the contrary, he is only suggesting that the view taken by the Tribunal is wrong and for this purpose, review is not maintainable. Accordingly this Review Application is dismissed. No costs.



MEMBER (J)

GIRISH/-