

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application . No. 63/2005 in O.A. No. 74/2005

This the 03rd day of April 2007

HON'BLE SHRI A.K. SINGH, MEMBER (A)
HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

Subhash Chandra Tripathi and others

...Applicants

By Advocate: Shri R.S. Gupta

Versus

Union of India and others

..Respondents

By Advocate: Sri G.K.Singh

ORDER (BY CIRCULATION)

BY HON'BLE SHRI A.K. SINGH, MEMBER (A)

This Review Application is directed against the order passed by the Tribunal in O.A. No. 74/2005 on 12.9.2005.

2. The scope of review under Section 22 (3)(f) of the AT Act, 1985 read with Order XLVII, Rule (1) and (2) is far too narrow.

3. Applicant has claimed two promotions at the same time which are exclusive in nature under law. Only one of such relief claimed simultaneously is admissible. Attention is invited to policy decision of Central Government on Conditions for grant of Benefits under the ACP scheme (Swamys News, September, 1999) which reads as under:-

"5.1 Two financial upgradations under the ACP Scheme in the entire Government Service Career of an employee shall be counted against regular promotions (including in situ promotion and fast-track promotion availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP scheme shall accrue to him.

4. Since the Tribunal had already directed to consider applicant's case for a review DPC, he could not have issued a 2nd direction for regular promotion. As the applicant becomes ineligible for any higher promotion of

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next 12 years under the ACP Scheme, there is no error apparent on the face of record and order is correct in law.

5. We have perused order dated 12.9.2005 and do not find any ^{other} error apparent on the face of record or discovery of any new and important material, which, even after exercise of due diligence, was not available with the review applicant. If the review applicant is not satisfied with the order passed by the Tribunal, remedy would lie elsewhere. By way of this review, the review applicant seek to re-argue the matter, which is not permissible in law. The Apex Court in **Union of India Vs. Tarit Ranjan Das 2004 SCC (L&S) 160** observed as under:-

"The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope of review is rather limited and is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court."

In the case of **Meera Bhanga (Smt.) Vs. Nirmala Kumari Chaudhary (Smt.) [Reported in (1995) 1 SCC 170 and Persion Devi and others Vs. Sumitra Devi and others [Reported in (1997) 8 SCC 715]** Hon'ble Apex Court has held as under:-

"Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of order 47, rule 1 of the CPC. The Review is to be entertained only on the ground of error apparent on the face of record and not on any other ground. The error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two options.

It is further stated in **Persion Devi (Supra)** that there is a clear distinction between the erroneous decision and error apparent on the face of the record.

While the first can be corrected by the higher forum, the latter can only be corrected by exercise of review jurisdiction.

The Review petition has a limited purpose and cannot be allowed to be on appeal in disguise."

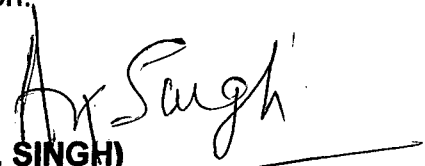
 In the case of **Tungabhadra Industries Ltd. Vs. Government of A.P. [Reported in AIR 1964 SC 1372]** it has been held by the Apex Court that:-

"A review cannot be asked merely for fresh hearing of arguments or for correction of an allegedly erroneous view taken earlier but only for correction of patent error of fact or law which stares in the face, without any elaborate arguments being needed for establishing it."

6. Having regard to the above, R.A. is dismissed in circulation.


(M.KANTHAIAH)
Member (J)

HLS/-,


(A.K. SINGH)
MEMBER (A)

OR
copy of order
dated 03-4-2007.
Prepared
24-4-2007