

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 2/2012 in O.A. 542/2010

This the ¹⁸th day of February, 2012

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Union of India and others

Applicants

By Advocate: Sri S.L.Mishra

Versus

K.K.Shukla

Respondent

ORDER (Under Circulation)

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This Review Application is directed against the judgment and order passed by this Tribunal on 9.9.2011 in O.A. No. 542/2010.

2. An application for condonation of delay in filing the review application has also been filed (M.P. No.229/2012). It has been said in this application that after receiving the judgment, the matter was considered by the authorities and legal opinion were sought, which caused some delay. An affidavit has also been filed in support of delay condonation application as well as review application. This affidavit has been sworn by one Sri Narsingh, Avar Adhishak Dakghar, Kanpur Nagar Mandal, Kanpur. It is a matter of common knowledge that usually, the departmental correspondence takes some time and the matters are not promptly attended. Moreover, it is better to decide the matter on merit if the delay is not inordinate. Therefore, it is allowed.

3. Now, review is being taken up for disposal.

4. I have gone through the entire review application carefully.

5. From para 1 to 7, the factual matrix has been discussed, which has already been dealt with in the judgment. In the subsequent paragraphs, a request for review has been made by referring paragraph 13 of the judgment. The perusal of judgment shows that this is the last and concluding paragraph of the judgment allowing the O.A. partly with a direction to the respondents to pay interest not less than 8.50% per annum. It has also been made clear that the interest would be paid retrospectively w.e.f. 1.7.2003. A direction was also given to



make payment of interest within stipulated period of 4 months from the date of certified copy of order is produced.

6. In para 9 of the Review Petition, it has been requested to review paragraph 13 of the judgment considering the fact that the applicant was entitled for his second financial upgradation from 22.2.2003 and he was considered with retrospective effect from 1.7.2003. Thus, the difference was only about 5 months and that difference has also been already paid. Therefore, a request has been made to waive off the payment of interest.

7. The above point has already been considered at the time of passing the judgment of this Tribunal. It is true that respondents themselves gave promotion w.e.f. 1.7.2003 on the basis of recommendations made by DPC held on 26.8.2010. But they did not give this promotion on their own. It was only when an order was passed by this Tribunal in another O.A. No. 134/2010 on 15.4.2010 for deciding the representation in this regard. Then only, the respondents immediately held a DOP and favourably recommended the promotion and the said representation was decided within 4-5 days i.e. on 1.9.2011 giving him promotion retrospectively w.e.f. 1.7.2003 as has been discussed in para 8 of the judgment. Similarly in para 9, it has been observed that undoubtedly, the respondents were responsible for causing this delay and for depriving the applicant from getting his due for a long period of about 7 years. After reaching to this conclusion, the rate of interest was decided after making a discussion in the following paragraphs 10 and 11. Consequently, the final directions were given in para 13. Therefore, I do not find any ground to review it.

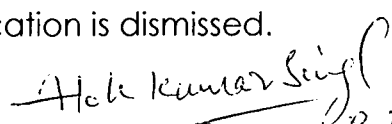
8. Otherwise also, the scope of review under section 22 (3)(f) of the Administrative Tribunal Act, 1985 read with Order XLVII Rule (1) and (2) of the CPC lies in a narrow campus. A review can be made only when there is error apparent on the face of record or on discovery of any new and important material which even after exercise of due diligence was not available with the applicant. Any erroneous decision and a decision which can be characterized as vitiated by "error apparent" has been distinguished by Hon'ble Apex Court by

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bench comprising three Hon'ble Judges in the case of **M/s Thungabhadra Industries Ltd. Vs. Govt. of Andhra Pradesh reported in AIR 1964 Supreme Court, 1372**. In this case, it was laid down that "A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error, where without any elaborate argument, one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out." **In 2002 Supreme Court Cases (L&S) 756 in the case of K.G. Derasari and Another Vs. Union of India and others**, also it was observed by the Apex Court that any attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment. The Tribunal cannot proceed to re-examine the matter as if it is Original Application before it in the light of the ratio given in **Subhash Vs. State of Maharashtra and other reported in AIR 2002 Supreme Court Cases, 2537**.

9. In the case in hand, no error apparent on the face of record or discovery of any new or important material could be shown, which even after exercise of due diligence was not available to the opposite parties (applicants). A review cannot be sought merely for a fresh hearing or arguments or even for correction of an erroneous view, if any, taken earlier. If any party is not satisfied with the orders passed by this Tribunal, the remedies lie elsewhere. The scope of review is very limited. This Tribunal cannot act as an appellate authority in respect of its own order, passing a fresh order or rehearing the matter to facilitate a change of opinion on merits.

10. Finally, therefore, this review application is dismissed.


(Justice Alok Kumar Singh) 8.2.12
Member (J)

on
copy of order
dated 16-2-12 HLS/-
Bhupat
10-2-2012