

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW

REVIEW APPLICATION NO. 401/90

this the <sup>5<sup>th</sup></sup> 11 day of September, 2000

HON'BLR MR. D.C. VERMA, MEMBER (J)

HON'BLR MR. A.K. MISRA, MEMBER (A)

A.K. Mukherjee, c/o Mr. Anand Chaturvedi, LLM  
Advocate, r/o E-2768, Rajaji Puram, Lucknow.

....Applicant

By Advocate: Sri R.C. Saxena.

Versus

Union of India

...Repondent

By Advocate: Sri Praveen Kumar B/h for Sri Anil  
Srivastava.

ORDER

D.C. VERMA, MEMBER (J)

A.K. Mukherjee has filed this application to review the Tribunal's order dated 25.5.90 passed in T.A. No. 1210/87 and T.A. No.1117/87. The order under review was passed by a bench consisting of Hon'blr Sri B.C. Mathur, Vice Chairman and Hon'ble Sri D.K. Agarwal Member (J). As both the members who had decided the T.A. cases superannuated, consequently the Hon'ble Vice Chairman has constituted this bench to hear the review application.

2. The applicant originally filed Writ Petition No.6290/82 before Lucknow Bench of the Allahabad High Court to challenge his non-selection to the post of Joint Director (Administration). Consequently <sup>A</sup> another Writ Petition No.524/83 was filed to challenge the adhoc promotion of juniors to the applicant. The Lucknow Bench of the Allahabad High Court vide order dated 17.12.83 dismissed the Writ Petition No. 6290/82 holding :-

"The post in question is a selection post".

3. The applicant was considered in that

11/9

selection and was found unfit. Consequently, the writ petition was dismissed. Subsequently, the applicant moved an application for recalling the dismissal order but in the meanwhile the Administrative Tribunal, Act came into force and the said application along with the writ petition No.524/83 was transferred to the Tribunal and was heard and decided by common order dated 25.5.90. This order is under review.

4. The ground of challenge is the finding of Central Administrative Tribunal that promotion to JA grade is a selection post. According to the applicant, promotion to the J.A. Grade was to be made on the basis of seniority subject to rejection of unfit. The submission of the applicant is that the Department did not place the correct facts before the court and consequently the judgement was obtained by fraud and the same be treated as nullity.

5. Learned Counsel for the respondents on the other had submitted that right of review is not a right of appeal. Question already decided cannot be reopened. The submission is that the scope of review is limited to the ground contained in order 47 of the Code<sup>5</sup> of Civil Procedure.

6. The case was earlier heard and orders were reserved in Feb., 2000. Before the order could be pronounced, the applicant filed Rejoinder, thereafter a Supplementary Rejoinder, Additional Supplementary Rejoinder and other applications. This delayed the disposal of the petition. On applicant's request, ACRs were also summoned and thereafter Counsel for the Parties were again heard.

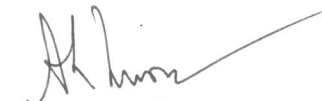
7. The Hon'ble High Court, Lucknow Bench in its order dated 17.11.83 held that the "Post in


-3-

A/2)

question is a selection post". The Tribunal in its order dated 25.5.90 also did not accept the contention of the applicant. Thus there is clear finding and such a finding cannot be reversed by a review petition. Further as had been held by the Tribunal and also by the Hon'ble High Court, Lucknow Bench, the petitioner was considered for appointment to J.A. Grade but was not found fit by the DPC. The applicant could only claim for his consideration for the post in question. Consideration was done and if the DPC found him unfit for the promotion, the Tribunal cannot interfere with the decision of the DPC.

8. As the grounds contained in the Review Application are beyond the scope of order 47 of the Civil Procedure Code, the Review Application has to be dismissed and is dismissed. Cost Easy.

  
MEMBER (A)

  
MEMBER (J)

Lucknow: Dated: <sup>11</sup> ~~07~~ 9. 2000 .

HLS/-