

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 986/96

Transfer Application No.

Date of Decision 4.3.97

B.M.Chaturvedi

Petitioner/s

Shri M.S.Ramamurthy

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

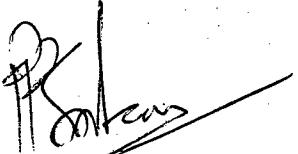
CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(P.P. SRIVASTAVA)

MEMBER (A)


(B.S. HEGDE)

MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 986/96

11th this the day of March 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

B.M.Chaturvedi
residing at Qr.No. E/15,
Ordnance Estate,
Ambernath - 421 502.

By Advocate Shri M.S.Ramamurthy ... Applicant
v/s.

1. Union of India
through the Secretary,
Department of Defence Production,
Ministry of Defence,
South Block, New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory,
Ambernath. Dist. Thane.

By Advocate Shri R.K.Shetty ... Respondents
C.G.S.C.

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicant in this OA. has sought the main relief that the proposed reversion of the applicant from the post of Foreman (T)/Junior Works Manager to the post of Assistant Foreman pursuant to the order dated 9.9.1996 be quashed. In this connection, the applicant had filed a previous OA.NO. 1237/93 seeking the same relief wherein the relief was that the applicant's [REDACTED] reversion from the post of Foreman to the post of Assistant Foreman pursuant to the order dated

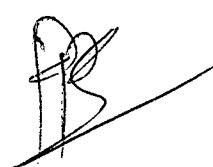


27.11.1993 is illegal, arbitrary and should be quashed. The OA.NO. 1237/93 was transferred to the Principal Bench as ~~a~~ ^{large} number of such petitions were filed all over the different Tribunals and all these OAs have been finally decided by the Full Bench of the Principal Bench vide their order dated 22.12.1995. The present applicant's OA.No. 1237/93 was renumbered as OA.NO. 61/95 in Principal Bench and the judgement of the Full Bench of the Principal Bench in this case is in Para 85 which reads as under :-

" 85. The following cases are of applicants who have claimed accelerated promotion based on the circular dated 6.11.1962. These cases are similar to that of Mannu Lal & Ors. referred to at para 81 (iii). Accordingly, all these applicants will count their seniority as Chargeman Grade II only from the date of their regular appointment in accordance with the rules as mentioned in sub-para (vi) of para 80 (supra)."

The applicant's case therefore in view of this above decision would be governed by sub-para (vi) of Para 80 of the judgement which reads as under :-

" (vi) We declare that, in the light of the judgement of the Supreme Court in K.K.M. Nair's case (1993) 1(2) SCALE 469) no benefit of higher seniority can be given to the petitioners Virender Kumar and Ors. in AIR 1981 SC 1775, the petitioners in the batch of Misc. Petitions 174/81 and five others decided by the M.P. High Court on 4.4.1983, the applicants in TA No. 322/86 and TA No. 104/86 (B.H. Ananta Moorthy's case and Ravinder Gupta's case). Accordingly, all these persons will count their seniority as Chargeman Grade-II only from the dates on which they were actually promoted in accordance with the recruitment rules."



2. Learned counsel for the applicant has argued that the Full Bench decision is against the decision of the Hon'ble Supreme Court in C.A.No. 441/81 and, therefore, the Full Bench judgement is required to be declared per incuriam and be ignored.

3. The learned counsel for the applicant has further argued that the applicant was one of the original petitioners in Civil Appeal No. 441/81 and had been granted the benefits under judgment dated 2.2.1981 and 28.3.1989 by Hon. Supreme Court.

4. The learned counsel for the applicant has further argued that the Hon'ble Supreme Court in Paluru Ramakrishniah and K.K.M. Nair has reiterated that the judgement in Civil Appeal No. 441/81 in which the applicant was one of the petitioner has become final and has to be implemented. Therefore the interpretation given by the Full Bench in Para 55 of its judgement, that the judgment of Hon. Supreme Court in K.K.M. Nair while dismissing the SLP has also taken away the benefits granted to the Petitioner in Civil Appeal No. 441/81 is patently erroneous and amounts to a total misreading of the judgement of the Hon'ble Supreme Court.

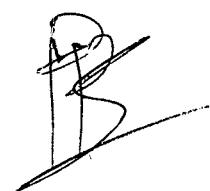
5. The learned counsel for the respondents on the other hand, on this point, has argued that the Full Bench has considered all the judgements of the Hon'ble Supreme Court cited above and the various cases filed all over the country as a result of these judgements and it has given final decision in which the applicant's case has also been considered. In view of this, this Divisional Bench of this Tribunal



cannot sit in judgement over the Full Bench decision comprising of 3 Members and the judgement of the Full Bench cannot be challenged in this OA. before a Division Bench.

6. We are in agreement ~~with~~ the learned counsel for the respondents on this aspect of the case that the decision of the Full Bench cannot be challenged before the Divisional Bench in the same case. It is not a case where the applicant is challenging the ratio laid down in the Full Bench and its applicability in the present OA. The OA. NO. 1237/93 of the applicant on similar relief has been considered by the Full Bench and decision of the Full Bench, therefore, is final and we, therefore, do not find any justification to consider the same controversy in the present OA.

7. The learned counsel for the applicant has also raised the issue that the Full Bench judgement in Para 79 has laid down as to what is required to be done in case if the reversion is to be ordered and ~~has~~ has raised the issue through the submission in the OA. at page 16, Ground (b). The learned counsel for the applicant has argued that the applicant would not stand reverted even if the case of the applicant is properly considered in terms of the principles laid down in Para 79 which lays down the principles to be followed in case the reversion is to be ordered for implementing the order of the Full Bench.



8. The learned counsel for the respondents on this issue has argued that the respondents have examined the relevant portion on the basis of the Full Bench judgement dated 22.12.1995 and have mentioned in Para 13 of their written statement that "Persons senior to the applicant and others like him as a result of the order dated 22.12.1995 of the Principal Bench would be adversely hit if the applicant and others like him were not reverted".

9. The applicant has not brought out any material on record in OA. to show that the respondents have not followed the principles laid down in Para 79 of the Full Bench judgement for the purpose of reversion which may have to be ordered as a result of the Full Bench judgement. The counsel for the respondents has argued that the reversion of the applicant has been made after considering and examining relevant portion of the Full Bench judgement. Consequently, we see no reason to interfere with the order of reversion. Since neither the applicant has brought out in the OA. nor the respondent administration has specifically replied as to how the reversion of the applicant is justified in terms of the principles laid down in Para 79 of the Full Bench judgement, we are unable to give any finding on the issue.

10. We have already held that the Full Bench judgement by which the applicant's previous OA. seeking similar relief in OA.NO. 1237/93 was decided cannot be challenged before the Division Bench.



11. In view of the above, we do not see any merit in the present OA, and the same is dismissed. There will be no orders as to costs.


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.23/98 in OA.NO.986/96

Presented this the 21st day of April 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

B.M.Chaturvedi

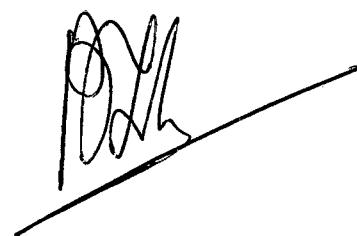
By Advocate Shri M.S.Ramamurthy ... Applicant
v/s.

Union of India & Ors.

By Advocate Shri R.K.Shetty ... Respondents

Tribunal's Order

The OA.NO. 986/96 was decided by the Tribunal by Division Bench of the Tribunal on 4.3.1997. The applicant has filed the Review Petition on 10.2.1998. In terms of the rule, review petition should have been filed within a period of one month from the date of decision. Taking into account that the applicant has collected the copy of the order on 14.3.1997, the review petition should have been filed on or before 14.4.1997. The applicant has filed along with the review petition an M.P. for condonation of delay. The review petitioner has prayed for review and recall of the order and judgement dated 4.3.1997 mainly on the ground that certain vital material and important facts could not be brought in the proceedings when OA.NO.986/96 was decided. The review petitioner has brought out that many employees in the list seniority list of Chargeman II prepared as a consequence of the judgement of Full Bench of this Tribunal are not

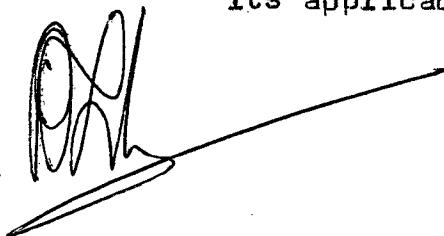


reverted and are still working in the higher grade, could not be brought out in the pleadings when OA.NO. 986/96 was decided.

2. The review petitioner has further brought out that the review petitioner had filed OA.NO.724/97 challenging the order of reversion dated 9.9.1996. In this OA. the review petitioner has annexed a list of persons who were junior to him which came to be published subsequent to the judgement in the OA. The review petitioner has brought out that this OA. 724/97 came to be rejected by the Tribunal vide its judgement and order dated 8.12.1997 on the ground of res-judicata as the petitioner had challenged the same reversion order in OA.NO.986/96. The learned counsel for the review petitioner has argued that the vital and important information that large number of persons junior to the applicant are still working could not be brought to the notice of the Tribunal in the original OA. and therefore the order of the Tribunal is required to be recalled.

3. We have heard the learned counsel for the review petitioner as well as perused the record. It is seen that firstly the OA. was rejected on the ground that the decision of Full Bench cannot be challenged before the Divisional Bench. It is observed in Para 6 as under :-

"6. We are in agreement with the learned counsel for the respondents on the aspect of the case that the decision of the Full Bench cannot be challenged before the Divisional Bench in the same case. It is not a case where the applicant is challenging the ratio laid down in the Full Bench and its applicability in the present OA.



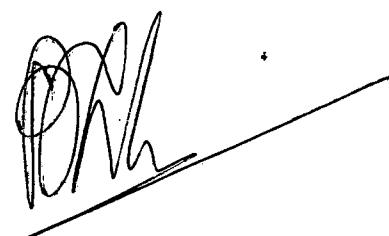
The OA.NO.1237/93 of the applicant on similar relief has been considered by the Full Bench and decision of the Full Bench, therefore, is final and we, therefore, do not find any justification to consider the same controversy in the present OA."

It was also observed by the Tribunal in Para 9 that :-

"9. The applicant has not brought out any material on record in OA. to show that the respondents have not followed the principles laid down in Para 79 of the Full Bench judgement for the purpose of reversion which may have to be ordered as a result of the Full Bench judgement."

Since the learned counsel for the respondents has argued that the reversion of the applicant has been made after considering and examining the decision of Full Bench, the Tribunal had declined to interfere with the order of reversion. Even in the present review petition it is not brought out as to how the fact of large number of junior employees working is relevant for the application of the principles laid down in Para 79 of the Full Bench judgement.

4. The review petitioner has not brought out any error apparent on the face of record in the judgement. It is now well established that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It is also now well established that it may be exercised where some mistake or error apparent on the face of the record is found. It may also be



exercised on any analogous ground but it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal.

5. From the above discussion, it is evident that the applicant has not been able to show any error apparent on the face of record nor the pleading of the applicant can be accepted that with due diligence he was not in a position to show that some junior persons were not reverted. We are, therefore, of the view that the applicant has not been able to make out a case for review of the order and judgement of the Tribunal.

6. Since we are rejecting the review petition on merit, we are not expressing any opinion on the question of delay in filing application for review.


(P.P. SRIVASTAVA)

MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.

dd. 21/4/98
Order/Judgement despatched
to Applicant/Respondent(s)
on 24/4/98.


28/4/98