

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.NO.748/1999

Wednesday, this the 5th day of March, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri K.V.Sachidanandan, Member (J)

Suresh Gangaram Chaudhari
Asstt. Prof (Arch)
College of Military Engineering
Pune - 411 031

(By Advocate: Shri S.P.Saxena)

Applicant

Versus

1. Union of India
through the Secretary
Ministry of Defence, DHQ, PO
New Delhi-11

2. Engineer-in-Chief
Engineer in Chief Branch
Army Head Quarters, DHQ PO
New Delhi-11

3. Director General of Military Training
Army Head Quarters, DHQ PO
New Delhi-11

4. Commandant
College of Military Engineering
Pune 411 031

Respondents

(By Advocate: Shri R.K.Shetty)

O R D E R (ORAL)

Shri Govindan S. Tampi:

The reliefs claimed by the applicant in this case are as below:

"(a) to allow this application,

(b) to direct the Respondents to extend the benefit of scale of pay of Rs.3700-5700 to applicant as sanctioned by AICTE to the post of Asstt. Professors, retrospectively w.e.f. 10.6.92 or from any other date which Tribunal may deem fit.

(c) to direct the respondents to pay the arrears of salary as a result of grant of AICTE pay scale as prayed above.

(d) to award the cost of the application."

2. Heard Shri S.P. Saxena, learned counsel for the applicant and Shri R.K.Shetty, learned senior counsel for the respondents.

3. The applicant, a Graduate in Architecture (B.Arch) became Chief Draughtsman in MES in 1997, whereafter in 1980, he was selected by UPSC as Assistant Architect (AA) in MES. He became a Deputy Architect (DA) in March, 1982 at Shillong and came over to Pune in 1989 where he was promoted to the post of Architect in the same organisation. He responded to the advertisement dated 23.2.1991 to 1.3.1991 published by UPSC for the post of Assistant Professor in Architect in College of Military Engineering (CME) Pune and was selected and appointed as Assistant Professor (AP) in the scale of pay of Rs.3000-5000/- where he continued to perform his duties. The pay recommended by the All India Council for Technical Education (AICTE) for the staff attached to Engineering College was extended to them in CME in 1995 but the benefit of the scale was denied to the applicant on the ground that he did not possess the Post Graduate Degree. At the same time, one Smt. S.S.Kelkar, who was working as a Lecturer in the same stream and who was similarly circumstanced as the applicant as far as the qualification is concerned, was allowed the AICTE's scale and career progression on an one time relaxation and dispensation. The applicant's representation for career advancement and the revision in the pay scale did not receive favourable response leading him to

approach the Tribunal. He also states that on a subsequent date in May, 1996, he passed the Master Engineering (Town Planning), which was an attached discipline of Architecture, but was given the benefit of higher pay scale only from 1998, as the certificate was issued only in 1998.

4. The grounds raised in this OA are that;

- a) the applicant's initial appointment as Assistant Professor was in terms of the existing rules, which were duly notified by the UPSC;
- b) the refusal of the extension of the AICTE's scale was illegal and arbitrary;
- c) while the AICTE's scale was denied to the applicant on the sole ground that he did not possess the Post Graduate qualification, which is prescribed by AICTE on a subsequent date, the same benefit was given to Smt. Kelkar, another candidate;
- d) the applicant holds Post Graduate Degree in Engineering (Town Planning) from 1996;
- e) AICTE has already given its opinion that the applicant was entitled to be given prescribed pay scale, which has not been accepted by the respondents; and
- f) when the scales recommended by the AICTE have been adopted by the CME, there was no reason why it should have been denied to the applicant.

5. Strongly rebutting the claim of the applicant, Shri R.K. Shetty, learned Senior Counsel pointed out that the OA did not have any merit. According to them, no cause of action had arisen and the applicant cannot have any legitimate grievance. The applicant was selected as Assistant Professor on 11.6.1992, on the basis of the interview conducted by the UPSC in pay scale of Rs.3000-5000/- . After the adoption of the AICTE's pay scales, which were extended to professorial staff of Defence Training Institutions - CME, Military College of Telecommunication Engineering, Mhow and Military College of Electronics & Mechanical Engineering, Secunderabad - the concerned staff was given the benefit but the applicant, though was already an Assistant Professor, was not found eligible for the grant of the revised pay scale of Rs.3700-5700/-, as they did not possess the minimum qualification, i.e., Post Graduation in their respective subjects. Applicant had only a B.Arch Degree (Pass) with 49% marks. The Ministry of Defence had considered the case of the applicant, but as it was found that the Master's Degree was a minimum qualification, in terms of AICTE's requirement, a reference was made to the administrative Ministry, which was not accepted. At the same time, the case of Smt. Kelkar, who was an Assistant Lecturer and who also did not possess the qualification as above, was considered for one time relaxation and dispensation. There was no reason why the benefit given to Smt. Kelkar should be given to the applicant because it was a policy decision of the Ministry. The nodal Ministry had decided that if the revised pay scales recommended by the AICTE have to be implemented in respect of anyone, he/she should have acquired the minimum qualification specified for the post. The fact that the applicant did not possess the Master's Degree had gone against him.

6. During the oral submissions before us today, Shri S.P. Saxena, learned counsel for applicant took us through the career graph of the applicant and had indicated that he was appointed as Assistant Professor in terms of the UPSC's advertisement, in terms of which he did possess the qualification, i.e., B.Arch Degree with seven years of experience in professional work and, therefore, it could not be stated that he was not qualified to get the same. He fairly conceded that the AICTE recommendations had come when the qualification fixed for AP was a Master's Degree, which he acquired only on a subsequent date. (In fact, the applicant got the Master's Degree in 1996, however, the respondents denied the benefits of higher pay scale stating that the Master's Degree was received only in 1999). His case is that when the respondents have taken upon themselves to grant one time relaxation and dispensation for a candidates, like Smt. Kelkar, who was also similarly placed as himself, in that she also did not have the Master's Degree, specified by the AICTE, there was no reason why the same benefits should have denied to the applicant.

7. Fervently rebutting the points raised by the Learned counsel for applicant, Shri R.K.Shetty, Learned Senior Counsel appearing for the respondents stated that the applicant did not have the teaching experience of seven years, which was prescribed in the advertisement. When it was specifically pointed out to him that the relevant advertisement prescribed Bachelor's Degree in Architecture with seven years' experience in teaching/research/ professional work and at the time of his recruitment as Assistant Professor, the applicant had completed as many as nine years of experience/professional work as AA, DA and Architect, the learned counsel did not press the point further. He further points out that once the

applicant acquired the Master's Degree in 1999, the respondents had fairly given him the AICTE's pay scale. Therefore, there was no reason at all for the applicant to ask for anything more and the respondents are not bound to give any further relief, urged Shri Shetty.

8. We have given anxious consideration to the rival contentions of the learned counsel for the parties. It is not disputed that the applicant was recruited by the UPSC as AP in CME. The qualifications prescribed in the advertisement issued by the UPSC are as under:

"ESSENTIAL:

(i) Bachelor of Architect with 7 years' experience in teaching/research/ professional work. OR (ii) Master of Architect with 5 years' experience in teaching/research/ professional work."

9. At the time of his recruitment, he had the qualifications of Bachelor Degree in Architecture with experience from 1980 to 1990, first as AA, DA and thereafter as an Architect. The first two appointments have been made by the UPSC, the highest body for recommending such appointments. Subsequently, AICTE introduced fresh pay scales along with which they also prescribed the qualifications, which came to be extended to the Institutes in 1995. The academic qualification for the post of Assistant Professor, in terms of AICTE's recommendations, is as below:

"4. Assistant Rs.3700-125-4950
Professor -150-5700
/Reader in
Architecture

1. First Class Bachelor's
Degree in Architecture or
equivalent qualification;

2. 7 years experience in
teaching/industry/rese-
-ch (5 years for those
possessing Master's
degree in Architecture
or in relevant discipline
or 3 years for those

possessing Ph.D in
Architecture or in
relevant discipline)"

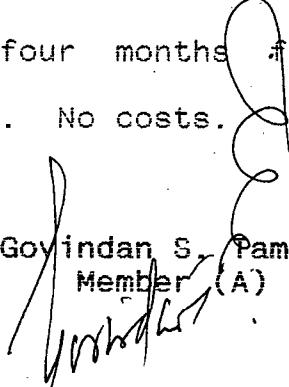
10. Admittedly, the applicant did not have the First Class Bachelor's Degree in Architecture (though later he has acquired a First Class Master's Degree in Town Planning). Prima facie, therefore, the higher pay scale of Rs.3700-5700/ was not given to him and the respondents appear to be justified in doing so. The fact, however, remains that the respondents have themselves acted in a different manner in the case of another employee Smt. Kelkar, who was also recruited in terms of the Recruitment Rules earlier and who did not possess the Master's Degree prescribed for the post below, for the reasons best known to them, granted one time relaxation and dispensation and granted the higher scale. It is interesting to note that the respondents, for granting the extra benefit arising from AICTE's scales, have taken resort to the Recruitment Rules, which they have themselves denied to the applicant. This is a clear case of discrimination. During the oral submissions, Shri Shetty, learned counsel for the respondents had contended that the cases of the present applicant and Smt. Kelkar are totally different and, therefore, the benefit granted to Smt. Kelkar should not be taken as a guiding principle. We do not agree. When both the applicants - the applicant and Smt. Kelkar - recruited in terms of the same Recruitment Rules and correctly so - they should have been treated in the same manner on subsequent occasions also. When the AICTE had recommended the new pay scales, both the applicant and Smt. Kelkar could not have ^{got} been ~~given~~ it but as pointed out earlier, Smt. Kelkar has been given the above benefit as a one time relaxation and dispensation, there was no reason why these could not have been considered in the case of the applicant when the Recruitment Rules, provided for the same in deserving cases.

[It is also interesting to note that though the applicant had, on a later date in 1996, passed the Master's Degree in Town Planning, he was granted the benefit only in 1999, as, they state, that the degree was made available to them only in 1999.] This fact is, however, of not much relevance as we are taking a view the applicant has been discriminated against and the action of the respondents in a clear and direct violation of the Articles 14 & 16 of the Constitution of India. In the circumstances, justice warrants that he should be granted the same benefits as has been given to Smt. Kelkar.

11. In this view of the matter, OA succeeds and is allowed. Respondents are directed to consider grant of one time relaxation and dispensation to the applicant, as has been given in the case of Smt. Kelkar by moving the administrative Ministry and after the said decision, place him in the higher scale, adopted by the AICTE, with all consequential benefits. This shall be done within a period of four months from the date of receipt of a copy of this order. No costs.


(K.V. Sachidanandan)
Member (J)

/sunil/


(Goyindan S. Pampi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 73/03 IN O.A. No.: 748/99.

Dated this Wednesday the 17th day of March, 2004.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

Shri Suresh G. Choudhary ... Applicant in O.A.
(By Advocate Shri S.P. Saxena)

VERSUS

Union of India & Others ... Respondents in O.A.
(Review Petitioner)
(By Advocate Shri R. R. Shetty)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

The present Review Petition is filed by the respondents for reviewing the order dated 05.03.2003 passed by the Division Bench of the Tribunal in O.A. No. 748/99.

2. The Original Applicant had filed the O.A. praying for extending the benefit of the scale of pay of Rs. 3700-5700 to applicant as sanctioned by AICTE to the post of Assistant Professors retrospectively w.e.f. 10.06.1992 or from any other date which Tribunal may deem fit and for directing the respondents to pay the arrears of salary as a result of grant of AICTE pay scale.

3. The Tribunal has allowed the O.A. and directed the respondents to consider grant of one time relaxation and dispensation to the application, as has been given in the case of Smt. Kelkar by moving the administrative Ministry and after the said decision, place him in the higher scale adopted by the AICTE.

with all consequential benefits. The said exercise was to be done within four months from the date of receipt of the copy of the order.

4. The respondents sought the review of the order in question on the ground that the Tribunal failed to take cognizance of prescribed qualifications for the post of Assistant Professor vide S1. No. 2 of Annexure-III to Appendix 2 to the circular dated 28.02.1989 bearing no. F.6-1/88/T-5 issued by the Government of India, Ministry of Human Resource Development (Department of Education). According to the respondents, in the decision there are errors apparent on the face of the record. It is also contended that the Learned Counsel had prayed for time to produce the documents mentioned in the review petition but the O.A. was disposed of on the very same day. It is also contended that the Tribunal quoted the prescribed AICTE qualification for the post of Assistant Professor from unauthorised letter dated 09.08.1996 which was produced by the applicant. According to respondents, the qualification quoted is in consistent with the prescribed qualification for the post of Assistant Professor. It is also contended that the Recruitment Rules were handed over to the Tribunal during the course of oral submission on 05.03.2003. There is no reference in the order to the Recruitment Rules. It is contended that had the Tribunal taken into consideration the true and authentic prescribed qualification of the AICTE for the post of Assistant Professor, the Tribunal could not have given the direction contended in para 11 of the order. The Tribunal accepted the U.P.S.C. advertisement which appeared in the Employment News dated 23.02.1991 to 01.03.1991 during the course of oral argument, inspite of the objection raised by the Learned Counsel for the respondents. The said advertisement is only a part of the advertisement and not the full advertisement. The Tribunal has committed an error of giving directions. It is also

contended that applicant has stated in para 4.2 of the O.A. that he was appointed in M.E.S. as Chief Draughtsman in 1977 whereas in the second line of para 3 of the order dated 05.03.2003 the Tribunal recorded the year as 1997 as the applicant's year of appointment as Chief Draughtsman, which requires to be corrected.

5. The Review Petitioner has also filed a M.P. for condonation of delay in filing the review petition.

6. The Review Petition is opposed by the original applicant.

7. Heard the Learned Counsel, Shri R. R. Shetty, for the Review Petitioner (original respondents) and Shri S. P. Saxena for the respondents (original applicant).

8. The Review Petitioner has mentioned in their affidavit that they had to seek instructions from the higher authorities at New Delhi and from their Counsel and thus, there was delay from 23.04.2003 to 18.08.2003 in filing the Review Petition. The Review petitioner has given the day to day action on the order dated 05.03.2003 before they could file the Review Petition. Considering all these facts, the delay in filing the Review Petition is condoned.

9. In Ajit Kumar Rath V/s. State of Orissa & others | 1999 (9) Supreme 321 their Lordships have observed that "the power available to Tribunal is same as available to a Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made.

The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it."

10. In the instant case, the applicant was selected as an Assistant Professor on 11.06.1992 on the basis of interview conducted by the U.P.S.C. in the pay scale of Rs. 3000-5000/in terms of U.P.S.C. advertisement in terms of which the applicant possessed the qualification of Bachelor of Architecture Degree with 7 years of experience in professional work. The pay recommended by All India Council of Technical Education for the staff attached to the Engineering College was extended to them in College of Military Engineering in 1995. The present applicant was denied the benefit of the scale of All India Council of Technical Education on the ground that he did not possess post-graduate qualification. At the same time, one Smt. Kelkar, who was also recruited in terms of Recruitment Rules earlier and who did not possess Master's Degree prescribed for the post and who was also similarly circumstanced as the applicant as far as qualification was concerned, was given AICTE scale and career progression as a one time relaxation and dispensation. The Tribunal in the order has observed that there was no reason why these could not have been considered in the case of applicant when the Recruitment Rules provided for the same for deserving cases. It is further observed that the applicant has been discriminated against and the action of the respondents in a clear and direct violation of the Articles 14 and 16 of the Constitution of India. In the circumstances, justice warrants

that he should be granted the same benefit as has been given to Smt. Kelkar and thus the O.A. was allowed and the respondents were directed to grant one time relaxation and dispensation to the applicant, as has been given in the case of Smt. Kelkar by moving the administrative Ministry and after the said decision, place him in the higher scale adopted by the AICTE with consequential benefits.

11. An erroneous interpretation and the erroneous conclusion by the Tribunal or Court cannot be the ground for review. A review cannot be granted on the ground that the decision is erroneous on merit. Such a ground being appropriate for an appeal, count not file an application for review. An error which is not self evident and has to be detected by reasoning, can hardly be said as an error apparent on the face of the record justifying the Court to exercise the power of its review.

12. We find no error apparent on the face of the record except the year mentioned in para 3 of the order which reads "The applicant, a Graduate in Architecture (B.Arch) became Chief Draughtsman in MES in 1997, whereafter in 1980, he was selected by UPSC as Assistant Architect (AA) in MES." It appears that due to typographical mistake the year is mentioned as 1997 which is required to be treated as 1977. The Review petition is disposed of accordingly. No costs.


(S. G. DESHMUKH)
MEMBER (J).


(A. K. AGARWAL)
VICE-CHAIRMAN

os*

O.A.No.748/99 Dt. 9.6.2004

CP No.91/2003 -- M.P. 862/2004

M.P. No.862/2004 has been filed on behalf of the respondents seeking extension of time for four months from 17.3.2004 when Review Petition against the Tribunal's judgement dated 5.3.2003 was dismissed. The learned counsel for the applicant in the M.P. stated that on 3.6.2004 all relevant documents have been sent to ENC's Branch to obtain Government's decision. The Army Headquarters of the Ministry of Defence are now seized of the matter and extension of time is now sought till 17.7.2004 by the learned counsel for the applicant in M.P. In this background M.P. is allowed allowing time till 17.7.2004 for the respondents for implementation of the directions of the Tribunal contained in order dated 5.3.2003.

C.P. No.91/03 be listed for consideration on 19.7.2004.

W.L. *Chairman*

V.K. Majotra

(V.K. Majotra)
Vice Chairman

By Mr. Deshmukh
adjudged to
30/3/04. 30/7/04 (8)

Shri Atre appears on behalf of
Shri S.P. Sareen.

Respondents by Shri R.K. Shetty.

M.P. 862/04 has been filed seeking
four months time beyond 17.7.2004
for implementation of the Tribunal's
order dated 5.3.2003.

*order dated 5.3.2003
to Appellants
on 23/6/04*

The learned counsel for respondents
MP No. 862/2004 states that Writ Petition has been
for extension filed before the High Court which
time fixed on is yet to come up for consideration.
30/7/2004.

Keeping in view the facts
and circumstances of the case, time
is extended by four months w.e.f
17.7.2004 to implement the

(3)

Tribunal's Order dated 5.3.03.

MP 510/2004 stands disposed
of.

List this ~~Op.~~ on 25.11.04.

MW

AKA

(S.G.Deshmukh)
Member(J)

(A.K.Agarwal)
Vice Chairman

for ados as
Ch. 9103
instone.

beil order
Writ issued
order issued
on 04/11/04
K-S

any

25.11.2004

Applicant by Ms.N.Gohad.

Respondents by Shri R.R.Shetty.
He states that Writ Petition was filed
before the High Court and it was listed
on 21.9.2004. He also submitted that
stay of the Tribunal's judgment has
been granted.

List this case on 14.2.2005.

Muzaffar Husain
(Muzaffar Husain)
Member (J)

A.K.Agarwal
(A.K.Agarwal)
Vice Chairman

Recd Order
28/11/04

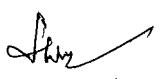
OA 748/99

Dated: 14.2.2005

Applicant by Ms. Sujata Krishnan for Shri S.P. Saxena. Respondents by Shri R.R. Shetty.

Shri Shetty states that the respondents have gone to the High Court in Writ Petition No. 6888/2004 against the order of the Tribunal dated 5.3/2003 and ad-interim stay has been granted by the High Court on 21.9.2004. In view of this he requested that the C.P. filed by the applicant be rejected.

The High Court has already ceased of the matter and stay has been given by the High Court against the order of the Tribunal, hence there is no question of implementation of the Tribunal's order for the present. The C.P. does not lie and therefore rejected. In this regard we are relying on the judgment given by the Hon'ble ^{Apex} High Court in SLP (Crl.) No. 2253/2000 wherein it has been stated that when in a case stay has been given by the Competent Court, the C.P. does not lie. The learned counsel for the applicant wants liberty to come in C.P. again in case the Writ Petition does not go in favour of the respondents. The applicant is at liberty to take action as per rules once the High Court decides the case. In view of this the notice issued on C.P. is discharged.


(Muzaffar Husain)
Member (J)


(Anand Kumar Bhatt)
Member (A)

NS