

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.86/1999
DATED THE 25TH DAY OF JUNE,2002

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

1. S/Shri J.Y.Marne, Lab.Attd., N.D.A.
2. R.V.Zande, Lab.Attd., N.D.A.
3. P.Patrick, Lab.Attd., N.D.A.
4. V.K.Bokil, Lab.Attd., N.D.A.
5. M.B.More, Lab.Attd., N.D.A.
6. A.K.Paigude, Lab.Attd., N.D.A.
7. G.R.Gaikwad, Lab.Attd., N.D.A.
8. A.G.Madne, Lab.Attd., N.D.A.
9. K.K.Salunke, Lab.Attd., N.D.A.
10. K.B.Valotre, Lab.Attd., N.D.A.
11. A.S.Masih, Lab.Attd., N.D.A.
12. L.P.Masih, Lab.Attd., N.D.A.
13. J.H.Gaikwad, Lab.Attd., N.D.A.
14. Smt.S.P.Mate, Lab.Attd., N.D.A.
15. G.D.Sangle, Lab.Attd., N.D.A.
16. G.B.Gurav, Lab.Attd., N.D.A.
17. Sukhram, Lab.Attd., N.D.A.
18. V.D.Kamble, Lab.Attd., N.D.A.
19. D.R.Gham, Lab.Attd., N.D.A.
20. B.R.Thorat, Lab.Attd., N.D.A.
21. A.G.Sheikh, Lab.Attd., N.D.A.
22. M.K.Dhondge, Lab.Attd., N.D.A.
23. Dharamvir, Lab.Attd., N.D.A.

All the applicants are posted at
Khadakwasla Pune.

... Applicants

By Advocate Shri S.P.Saxena

V/s.

1. Union of India,
Through The Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.
2. Director of Military Training,
Army Headquarters,
New Delhi - 110 011.
3. The Commandant,
National Defence Academy,
Khadakwasla, Pune-411 023.

... Respondents

By Advocate Shri R.K.Shetty

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(ORAL)(ORDER)

Per Shri S.L.Jain, Member(J)

This is an application under section-19 of the Administrative Tribunals Act 1985 for a direction to respondents to create appropriate promotional avenue for the Laboratory Attendant and to consider the granting of the scale of pay of Rs.950-1500 pre-revised at par with the Switch Board Attendant of M.E.S. department, or at par with those Laboratory Attendants working in the Central Revenue Control Laboratory with effect from 1/1/1986.

2. The relief of payscale and promotional avenue being distinct reliefs, we enquired from the learned counsel for applicant to elect only one relief and he has stated that he will agitate the relief regarding payscale by way of a separate OA. The only relief being considered in this OA is regarding the creation of promotional avenue.

3. The applicants are recruited as Laboratory Attendants. The learned counsel for applicants referred to recruitment rules at Exhibit R-1 (page-34 of OA), for Laboratory Assistant Gr.II. As per the averments of the respondents the promotional avenue for Laboratory Attendant is Laboratory Assistant only.

4. As per the recruitment rules, the educational qualification for the post of Laboratory Assistant is Higher Secondary or equivalent from a recognised Board with Physics and Chemistry as Principal subjects. On perusal of column 10 and 11, we find the post of Laboratory Assistant is to be filled up by promotion failing which by transfer and failing both by direct recruitment, ~~and~~ Laboratory attendant with three years service in the grade ^{is entitled to be considered for promotion.} Apparently it appears that Laboratory Attendants have a promotional avenue to the post of Laboratory Assistant.

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5. On perusal of the written statement, we find that two posts of Laboratory Assistants are lying vacant with the third respondents. None of the applicants have been promoted due to non fulfilment of educational qualification for the post of Laboratory Assistant.

6. The educational qualification for the Laboratory Attendants is middle standard, as such, it cannot be said that while for laboratory Assistant is Higher Secondary or Equivalent from a recognised Board with Physics and Chemistry as Principal subjects. the applicants recruited as Laboratory attendants have a promotional avenue as Laboratory Assistants. Promotional avenue does not mean that the person should possess the higher qualification than as required for the post for which he was recruited. The experience or the length of service can be the only exception to the said proposition.

To acquire the higher ^{quali} classification permission from the competent authority ^h if necessary which is granted only to limited persons of the cadre strength subject to (not as right) ~~but~~ discretion depending upon the situation or work load in the office. In the result, we find that there is no promotional avenue for the applicants as they are not qualified for the post of Laboratory Assistant.

7. The learned counsel for the applicant relied on AIR 1989 SC 1972 Council of Scientific and Industrial Research and Anr. V/s. K.G.S.Bhatt and Anr. and AIR 1988 SC 1033 Raghunath Prasad Singh V/s. Secretary, Home(Police) Department, Government of Bihar and Ors which lays down the proposition that Opportunity of advancement has to be given. Person is appointed not just for ^{job} ~~but~~ but for whole career. In the absence of promotional

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prospects the service is bound to degenerate and stagnation kills the desire to serve properly. It is expected that in a service realm, atleast two promotional avenues must be there.

8. The learned counsel for the respondents argued that the case of the applicants was considered for ~~for~~ promotional avenues by the expert body ^{ie.} Pay Commission and no promotional avenues were provided to them. As such, these applicants who had approached the Tribunal, their claim is ~~time~~ barred by principles of res judicata. Nothing is placed on record to arrive to a conclusion that ^{it} ~~what~~ was placed before the Fifth Pay Commission.

9. The learned counsel for the respondents relied on 1999 SCC (L&S) 787 I.C.A.R and Anr. V/s. Manmohan Batra and argued that the criteria for promotion cannot be laid down by the Tribunal and the CAT could not have issued a direction to create a post in higher grade in ICAR.

10. We are in agreement with the judgement cited by the respondents and we restrain ourselves from directing the respondents for creation of post, but we are of the considered view that the respondents can be directed to consider for promotional avenues for the cadre of Laboratory Attendant minimum two avenues in ^{view of} of the judgement of the Apex Court referred above.

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11. In the result, the OA is allowed. We direct the respondents to consider the the case of the Laboratory Attendants regarding promotional avenue and provide minimum two promotional avenues within a period of three months from the date of receipt of copy of this order. No orders as to costs.

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(SMT. SHANTA SHASTRY)
MEMBER(A)

S.L. Jain

(S.L. JAIN)
MEMBER(J)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI**

**REVIEW PETITION NO. 46/02
IN
ORIGINAL APPLICATION NO.96/99**

THIS THE 19 TH FEBRUARY, 2004

**CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)**

J.Y. Marne & 22 Ors.

... Applicants

By Advocate Shri S.P. Saxena

Vs.

Union of India & Ors.

.. Respondents

By Advocate Shri R.K. Shetty.

**O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)**

This review petition has been filed by the respondents seeking dismissal of the order dated 25.6.2002 in OA No.86/99 on the following grounds.

a) That through inadvertence and/or accidental omission the respondents have failed to bring to the notice of this Tribunal the details of appointment and promotional / financial upgradation under the Assured Career Progression Scheme (ACPS for short) pursuant to the recommendation of the 5th Pay Commission in favour of the applicants.

b) Secondly failure to bring it to the notice of this Tribunal the contents of Exhibit RP-2 during the course of hearing on 25.6.2002 is an error apparent on the face of the record and this error came to the notice of respondents only after the receipt of Tribunal's order dated 25.6.2002.

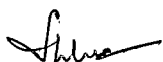


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2. We have gone through the pleadings and averments in review petition of the respondents as well as the reply filed by the applicants in OA and also heard learned counsel for the rival parties.

3. As to fresh point, this review petition taken out by the respondents to suggest that no promotional avenue can be prescribed, as ACPS /financial upgradation is already granted to some of the applicants. In our view it makes no difference as the financial upgradation is not a promotion involving the higher status and higher duties. The Tribunal has passed the impugned order dated 25.6.2002, after considering all aspects of the case as indicated in para 7 of the judgment. Learned counsel for the petitioners also argued that ACPS could not be brought on record by mistake and had it been placed on record, the judgment of the Tribunal would have been otherwise. This contention is not sustainable in law, because the ACPS was within the knowledge of respondents at the time of hearing of the case and they could have placed it on record, if so required.

4. The scope of review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order XXXVII Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence



was not within his knowledge or could not be brought by him at the time when the judgment was made, or on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in *Ajit Kumar Rath Vs. State of Orissa & Ors* 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given 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. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other 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 Hon'ble Supreme Court in *Subash Vs. State of Maharashtra* 2002 SC 2537 has observed in para 3 as under:

..... there is no justification for the Tribunal to have reviewed the matter once over again, particularly, when the scope of review is very much limited under Section 22 (3)(f) of the Administrative Tribunals Act, 1985 as is vested in a Civil Court under the Code of Civil Procedure. The Tribunal could have interfered in the matter if the error pointed out, is plain and apparent. But the Tribunal proceeded to



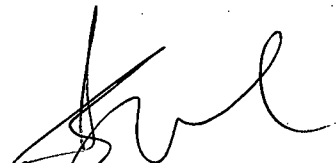
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re-examine the matter as if it is an original application before it. This is not the scope of review."

4. In our view there is no error apparent on the face of the record and there is no discovery of the new facts within the meaning of Order XXXXVII Rule 1 CPC. The grounds stated in review petition do not come within the purview of Order XXXXVII Rule 1 CPC. Therefore, we find that there is no merit in the review petition. In the result the review petition is dismissed with no order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(A.K. AGARWAL)
VICE CHAIRMAN

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