

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.
(By Advocate Shri R. R. Shetty) (Review Petitioner)

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 Sl. 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 inconsistent 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 face 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, cannot 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

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