

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, AT MUMBAI.

REVIEW PETITION NO.13/2004

IN

O.A. No.771/2001

CORAM: HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Shri Swami Durain Sundareshan ... Applicant
Petitioner
(Applicant/Petitioner by Shri S.S.Karkera, Advocate)

vs.

UOI and 3 Ors. ... Respondents
(Respondents by Shri V.S.Masurkar, Advocate)

ORDER IN R.P.NO.13/2004 DTD. 6/7/2004.

[Per: S.G. Deshmukh, Member (J)]:

The present Review Petition is filed by the applicant for review of the order of the Tribunal dated 29.5.2002 in O.A. No.771/01.

2. The applicant had filed the O.A. being aggrieved by the order dated 31.3.1997 against work charged post of Khalasi instead of regularising him as Mate. The O.A. was dismissed vide order dated 29.5.2002. It is the contention of the applicant that he had filed the case for regularisation in group 'C' post Mate on the basis of Circulars issued by the Railway Board from time to time. It is his contention that Circular No.E(NG)/97/RC/314 dated 9.4.1997 was not circulated to all concerned through the respondents though the respondents were well aware of the fact. The applicant was entitled for regularisation in Group 'C' post. It is the contention of the applicant that he studied up to 8th standard and he cannot discover the circular in question. He came to know about the said circular after coming to know about the judgement of Jaipur Bench in O.A. No.127/2001 dated 30.12.2003 in the case of

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Kushiram vs. UOI and Anr. It is the contention of the applicant that he came to know about the judgement in the first week of Jan.2004. It is the contention of the applicant that his case is identical and would have been allowed taking into consideration of the Railway Board's circular as well as the decision of the Apex Court in Ram Kumar & Ors. vs. UOI 1989 SC 390 (Larger Bench) and there arose an error apparent on law while delivering the judgement and the judgement:

3. The applicant also requested for condoning the delay.


4. The respondents filed their counter affidavit and contended that the judgement in O.A. was delivered on 29.4.2002. The R.P. is filed on 3.2.2004. According to the rule, the R.P. is to be filed within 30 days hence the R.P. deserves to be dismissed on the ground of limitation.

5. It is further contended that the Railway Board Circular dated 9.4.1997 is not at all applicable in the present case of the applicant. The applicant was not working in Group 'C' post prior to his absorption in Gr. D posts in the open line. It is also contended that the judgement dated 30.12.2003 of Jaipur Bench does not make it a point to file Review Petition as the Review Petition is filed when there is an apparent error on the face of the judgement and some document or rule position could not be shown at the time of hearing which were later discovered. The applicant wants to review the judgement dated 29.5.2002 on the basis of subsequent judgement dated 30.12.2003. Hence the R.P. deserves to be dismissed.

6. Heard the learned counsel Shri S.S.Karkera for the applicant and Shri V.S.Masurkar, for the respondents.

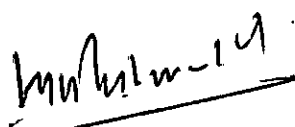
7. It is well settled that the power to review can be exercised on the application of a person on the discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power 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 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.

8. In the instant case, the O.A. 771/01 has been decided on 29.2.2002. The present R.P. is filed on 3.2.2004 i.e. after a lapse of more than one and half year. The R.P. is required to be filed within 30 days of the date of judgement. The explanation given by the applicant that he came to know about the Railway Board's circular in question only through the judgement of Jaipur Bench in O.A. No. 127/2001 which was delivered on 30.12.2003 cannot be accepted as a justifiable reason to condone the inordinate delay of one and half years. The circular is of 1997. Further Circular No.E(NG)/97/RC/314 dated 9.4.1997 is regarding the regularisation of casual labour working in the Group 'c' scale. The applicant was not working in Group 'C' post prior to his absorption in Group 'D' posts in the open line. Thus, the circular in question cannot be said to be applicable to the applicant in question.

9. The review can be exercised only for correction of an
 apparent error on the face of the judgement, and some document or

rule position could not be shown at the time of hearing which were later discovered. In the instant case, applicant wanted to Review the judgement delivered on 29.5.2002 on the basis of a judgement which was subsequently delivered on 30.12.2003. The R.P. based on a judgement which was delivered subsequently cannot be allowed.

10. In view of the above discussion, I do not find any mistake or error apparent on the face of the record. There is no sufficient and justifiable reason to condone the delay in filing the R.P. The judgement cannot be reviewed on the basis of a judgement which was delivered subsequently. R.P. is dismissed. No costs.


(S.G. Deshmukh)
Member (J)

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