

REGISTEREDCENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 15-12-87

APPLICATION NO 317 / 8 7 (F)

W.P.No. _____

APPLICANT

Shri G. Mohan

To

Vs

RESPONDENTSThe Secy, M/o Finance (Dept of Revenue)
New Delhi & 2 Ors

1. Shri G. Mohan
K.T. Apartments-6
61/1, 11th Main Road
13th Cross, Malleswaram
Bangalore - 560 003
2. Dr M.S. Nagaraja
Advocate
35, (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
3. The Secretary
Ministry of Finance
(Department of Revenue)
New Delhi - 110 001
4. The Chairman
Central Board of Excise & Customs
Ministry of Finance
Department of Revenue
New Delhi
5. The Collector of Customs
Central Revenue Buildings
Queens' Road
Bangalore - 560 001

6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

*Received Copy
on behalf of R/S
11/1/88
SV. Subramanyam
INSPECTOR*

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY

INTERIM ORDER passed by this Tribunal in the above said application
on 11-12-87

RECEIVED 6 copies 16/12/87

Diary No. 153-1/2/87

Dr Date: 16.12.87

Encls as above.

DEPUTY-REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 11TH DAY OF DECEMBER 1987

Present : Hon'ble Shri L.H.A. Rego ... Member (A)
Hon'ble Shri Ch. Ramakrishna Rao ... Member (J)

Application No. 317 or 1987

Shri G. Mohan,
K.T. Apartments-6,
61/1, 11th Main Road,
13th Cross, Malleswaram,
Bangalore-560003.

... Applicant

(Dr. M.S. Nagaraj, Advocate)

vs

1. The Secretary to the Government
of India, Ministry of Finance,
(Department of Revenue),
New Delhi.
2. The Chairman,
Central Board of Excise and
Customs, Ministry of Finance,
Department of Revenue,
New Delhi.
3. The Collector of Customs,
Central Revenue Buildings,
Queen's Road, Bangalore-1. ... Respondents

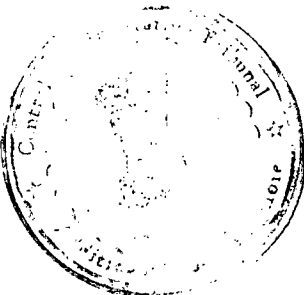
(Shri M.S. Padmarajaiah, Advocate)

This application came up for hearing on 9-12-1987
before this Tribunal. Hon'ble Shri Ch. Ramakrishna Rao,
Member (J) made the following:

ORDER

This is an application filed under section 19 of
the Administrative Tribunals Act, 1985.

2. The facts giving rise to this application lie in
a narrow compass.



Chd

3. The applicant has been working as Assistant Collector of Customs (Legal), Bangalore, since August 1985. He was promoted as Deputy Collector of Central Excise ('Dy Collector' for short) and was posted to Kanpur, along with other officers, mentioned in Order No.64/86 dated 7.5.1986, issued by the Ministry of Finance (Department of Revenue). However, the Order of promotion, in so far as it related to the applicant, was cancelled by Order No.67/86 dated 8.5.1986, by the Ministry of Finance. Aggrieved by this Order dated 8.5.1986, cancelling his promotion, the applicant has filed his application.

4. Dr.M.S.Nagaraja, learned counsel for the applicant, strenuously contends, that no reasons have been assigned in the order, cancelling the promotion of the applicant and as such principles of natural justice have been violated. DR.Nagaraja maintains, that the order cancelling the promotion of the applicant dated 8.5.1986, is liable to be set aside, since not only is it a bald order but also it is an arbitrary one.

5. Shri M.S.Padmarajaiah, learned counsel for the respondents, submits, that the applicant was promoted on the erroneous impression that no vigilance proceedings were pending against him; that immediately after passing the order of promotion, it was discovered, that the applicant was involved in a case, which was under investigation by the Central Bureau of Investigation (CBI) and in respect of which, the CBI had forwarded SP's Report No.27 dated 28.9.1985; that the report was being processed by the Vigilance Wing of the Central Board of Excise and Customs (CBEC), impleaded as Respondent 2 in the application; that as the processing of the file reached an advanced stage on 7.5.1986, when the order of



Chit

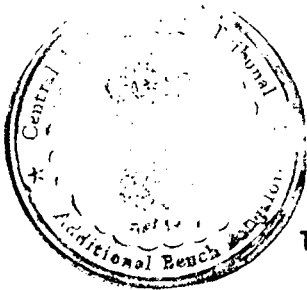
promotion was issued to the applicant by oversight, ~~and that~~ respondents took steps to cancel the order of promotion by cancelling the promotion on 8.5.1986. According to Shri Padmarajaiah, since the order of promotion was issued by mistake, the respondents had the liberty to withdraw the same by cancelling the order and in such cases, the principles of natural justice cannot be invoked by the person who has wrongly been promoted.

6. We have considered the rival contentions carerully. The question whether any notice should be given to a person who has been wrongly promoted was considered by this Bench of the Tribunal in A No.206/87(T) G. KRISHNA V. UNION OF INDIA AND OTHERS decided on 16th April 1987. In that case, the applicant who was working as sanitary mate in the Station Headquarters, Bangalore, was promoted as a Lower Division Clerk with effect from 1.1.1977 by order dated 19.1.1977. This order was cancelled on 18.3.1977. Aggrieved by the order of cancellation, the applicant in that case moved the Tribunal. Upholding the order of cancellation this Bench observed as under:

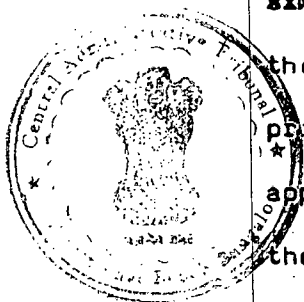
"We are satisfied that the order appointing the applicant as LDC was passed by R4 under the erroneous impression that he was competent to do so and he had to cancel the same subsequently realising the mistake on his part. The legal position is well settled that when an authority issues an order under misapprehension of the factual/legal position, it is open to him to issue another order cancelling the earlier order. In doing so, the authority is not expected to issue any notice to the person affected, since no rights accrue to that person, on account of an invalid order, as in the present case".

Thus mistake is a cogent ground for cancelling an order of promotion.

7. Dr. Nagaraja calls in aid two decisions in support of his contention, that notice should be given, even in cases where an



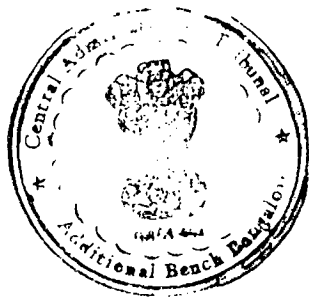
order is vitiated by mistake. The first ~~xxx~~ is ~~xx~~ a decision by a Division Bench of the Allahabad High Court in MEHAR SINGH V. DIST. INSPECTOR OF SCHOOLS 1985 LAB I.C. 719 in which it was held that "there is nothing in the U.P. Intermediate Education Act or the Regulations framed thereunder, giving power of review to the District Inspector of School. An exception to this rule has, however, been made and it is to the effect, that the District Inspector of Schools could recall or revoke his order if it is obtained by mistake, misrepresentation or fraud. And even this cannot be done, unless an opportunity of hearing or explanation has been given to the person, who will be affected by such order. From a perusal of the judgment it appears, that the order of appointment of the petitioner^{or} as a Lecturer, was cancelled after the petitioner joined post but in the present case the applicant had not taken charge of the post of Dy. Collector at Kanpur before the promotion order was cancelled. This makes a substantial difference on facts, because no vested right, can accrue to a person, who has not joined the post at all, pursuant to the order of promotion. The next case relied upon by Dr. Nagaraja is NARENDRA PANDEY AND OTHERS V. STATE OF BIHAR AND ANOTHER 1985 LAB I.C. NOC 90 (PAT.). In this case also, the order of appointment of the petitioners as teachers, took effect and the petitioners were actually in service and since their services were terminated without any notice ~~and~~ ~~xxxxxx~~ being given, the High Court set aside the order cancelling the appointment of the petitioners, on the ground of violation of principles of audi alteram partem. In the present case since the applicant had not assumed charge as Dy. Collector ~~the ratio of~~ these decisions have no application. We, therefore, hold that the ratio of the decision of this Bench in the decision referred ^{to} supra is applicable to the present case.



8. Dr. Nagaraja next contends, that it is not sufficient if vigilance proceedings were pending on the date when the Departmental Promotion Committee (DPC) met for preparing the list of candidates fit for promotion; that on the date the DPC met, a departmental proceeding should have been initiated or at least the officer concerned should have been placed under suspension; that the report dated 28.9.1985 forwarded by the CBI to the CVD, functioning under CBEC, long after the DPC had met and finalised the names of officers fit for promotion and the charge-sheet ^{having been} filed only on 24.6.1987 ie., *Ans* one year and one month after the promotion of the applicant was ordered, the cancellation of the order of promotion on 8.5.1986 is legally unsustainable.

9. Shri Padmarajaiah strongly refutes the contentions of Dr. Nagaraja and submits that the pendency of a disciplinary proceeding ^{de} on the date, when the DPC was convened, is not a must, for denying promotions to an official, whose conduct is under investigation by CBI pursuant to a case registered with CBI (SPE Division), Bangalore, on a source information; that in the present case, the investigation had reached an advanced stage, by the time the order of promotion was issued and the respondents were, therefore, justified in cancelling the order of promotion.

10. We have considered the rival contentions and perused the file produced before us, on behalf of the respondents relating to RC 37/84 registered with the Central Bureau of Investi-



Ans

gation. On a perusal of the relevant files, we note, that Case No.R.C.37/84-BLR dated 29-10-1984, was registered by the CBI (SPE Division), Bangalore, against the applicant on a source information, involving allegations against him. The allegations made against the applicant in the above said ^{CU} case was examined by the CBI and SP's Report No.27 dated 28-9-1985, was duly forwarded by the CBI, to the CVO attached to R-2. This report was processed by the Vigilance Wing of R-2 in January 1986. When the file reached the CVO, he recorded a note on 15-4-1986 in which he stated

"The evidence brought out so far through SPE's investigation is enough to create a reasonable doubt regarding Shri Mohan's integrity or at least the propriety of his conduct. His misconduct is serious enough to merit major penalty proceedings against him. These papers would be referred to the CVC after Member has seen."

Thereafter, the CVO recorded a note on 13-5-1986 and marked the file to Chairman, CBC, who in turn marked ^{it} to Member(Cus-II). ^{CU} The Member in his note dated 4-6-1986 desired, that the case be referred to the CVC for their opinion. The Director, CVC, marked to CVO ^{CU} in his note dated 23-9-1986/observed:

"The Commission, therefore, agrees with the proposal of the CBI and the Deptt. for the prosecution of Shri G. Mohan, Asstt. Collector Customs, Bangalore. CBEC may also forward to the CBI their detailed reasons as to why they consider that the refund orders passed by Shri Mohan, were not proper so as to strengthen the CBI's case.

The Commission would, however, also advise initiation of major penalty proceedings against Shri Mohan simultaneously. Shri M.K. Dixit, CDI, Jammagar House Hutments, Akbar Road, New Delhi, may be appointed as Inquiry Officer for the purpose, if an enquiry becomes necessary."

Subsequently steps were taken by the respondents as recommended by the CVC and the applicant was also placed under suspension.

^{CU}

11. It is thus apparent, that on the date when the DPC meeting was held ~~xxx~~ on 10-12-1985, the SP's Report had already been received on 31-10-1985, but the same was being processed. A decision to initiate proceedings against the applicant seems to have been taken only in September 1986. In view of this, the DPC was justified in considering the name ^{name} ~~the~~ of the applicant for promotion and including him/ ⁱⁿ the list ^{selected} of candidates. However, there was an interregnum between 10-12-1985, when the DPC met and selected the officers for promotion to the grade of Deputy Collector of Customs and Central Excise and 7th May 1986, when the order was passed by the competent authority, giving effect to the recommendations of the DPC by promoting the officers. Since the scrutiny of the SP's Report by R-2 was at an advanced stage and a prima facie case was ^{found to exist} ~~not found to exist~~ before the issue of the order dated 7th May 1986, of which the respondents were not presumably aware and came to know of it immediately thereafter, the order dated 8th May 1986 was passed, cancelling the order promoting the officers in so far as it related to the applicant. We therefore find no infirmity in the order cancelling the promotion and posting of the applicant which had not taken effect on the date it was cancelled.

In the result, the application is dismissed.

No order as to costs.



Sd/-

(CH. RAMAKRISHNA RAO) 11/12/87
MEMBER(J)
11.12.87

Sd/-

(L.H.A. REGU) 11.12.87
MEMBER(A)
11.12.87

- True copy -

[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex(BDA)

Indiranagar

Bangalore - 560 038

Dated : 24 MAY 1988

REVIEW APPLICATION NO. 10 / 88
 IN APPLICATION NO. 317/87(F)
 W.P. NO. _____

Applicant

Shri G. Mohan

To

V/s

Respondent

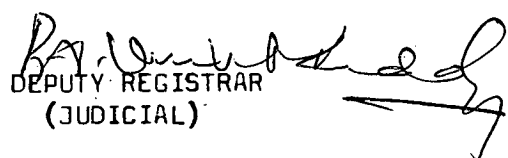
The Secy, M/o Finance (Dept of Revenue),
 New Delhi & 2 Ors

1. Shri G. Mohan
 K.T. Apartments-6
 61/1, 11th Main Road
 13th Cross, Malleswaram
 Bangalore - 560 003
2. Shri S.K. Srinivasan
 Advocate
 35 (Above Hotel Swagath)
 1st Main, Gandhinagar
 Bangalore - 560 009
3. The Secretary
 Ministry of Finance
 (Department of Revenue)
 New Delhi - 110 001

4. The Chairman
 Central Board of Excise & Customs
 Ministry of Finance
 Department of Revenue
 New Delhi
5. The Collector of Customs
 Central Revenue Buildings
 Queens Road
 Bangalore - 560 001
6. Shri M.S. Padmarajaiah
 Central Govt. Stng Counsel
 High Court Building
 Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY / INTERIM ORDER~~
 Review
 passed by this Tribunal in the above said application on 23-5-88.


 DEPUTY REGISTRAR
 (JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : BANGALORE.

DATED THIS THE TWENTY THIRD DAY OF MAY, 1988.

Coram:

Hon'ble Shri L.H.A. Rego, Member (A).
and
Hon'ble Shri Ch. Ramakrishna Rao, Member (J).

REVIEW APPLICATION No. 10/88

in

A. No. 317/87.

G. MohanApplicant.

vs.

The Secretary to Govt. of India,
Ministry of Finance (Dept. of Revenue),
New Delhi, and two others.Respondents.

This review application having come up for hearing
on 20.5.1988, and having stood for consideration till this day,
Hon'ble Member (J) made the following:

O R D E R

The facts involved in A.No. 317/87 referred to as the
DA, are briefly as follows:

The applicant was working as Assistant Collector of
Customs (Legal), Bangalore, since August, 1985. He was
promoted as Deputy Collector of Central Excise (Dy. Collector,
for short), and was posted to Kanpur, along with other officers,
in Order No. 64/86 dated 7.5.1986, issued by the Ministry of
Finance (Department of Revenue). However, the order of



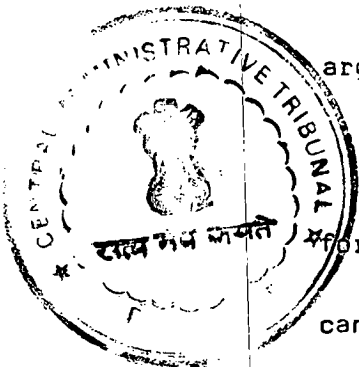
Handwritten signature/initials

promotion, in so far as it related to the applicant, was cancelled by order dated 8.5.1986 by the Ministry of Finance. Aggrieved by this Order, dated 8.5.1986, cancelling his promotion, the applicant filed the OA, which was dismissed by a Division Bench of this Tribunal in its Judgment dated 11.12.1987 (Judgment, for short). Aggrieved by the Judgment, the applicant has filed the present review application (RA).

2. The applicant has filed an interlocutory application for condoning the delay in filing the RA. After perusing the same and hearing the counsel on both sides, we condone the delay in filing the RA.

3. Shri S.K. Srinivasan, learned counsel for the applicant, contends that there are errors apparent on the face of the Judgment rendered earlier. He elaborated his argument as follows:

No reasons were given in the order dated 8.5.1986 for cancelling the order dated 7.5.1986, under which the applicant was promoted to the post of Dy. Collector. Reliance was placed at the time of arguments in the OA on the decision of the Full Bench of this Tribunal in K.CH. VENKATA REDDY & OTHERS v. UNION OF INDIA (ATR 1987(1) CAT 547 at page 561), and this was not referred to in the Judgment; In O.M. dated 14.7.1977,



Handwritten signature

the Government had decided that the sealed cover procedure should be followed in cases where after investigation, the evidence collected indicates prima facie guilt of the officer concerned, and not when the preliminary investigation is pending and no conclusion is reached about the prima facie guilt of the officer, since at that stage, there is no ground for treating the said officer as one whose conduct is under investigation. An officer can be said to be under investigation, only when a charge sheet is filed in a criminal court of charge memo under CC&A Rules is issued to the official. The procedure outlined in the OM was approved by the Full Bench of this Tribunal, and the ratio of its ruling not having been followed, there is an error apparent on the face of the Judgment, which calls for rectification.

4. Shri M.S. Padmarajaiah, Senior C.G.S.C., appearing for the respondents, strenuously opposes the admission of the RA, on the ground that though the Full Bench decision has not been cited in the Judgment, the ratio of the Full Bench ruling has been noticed in the Judgment; that the operation of the Full Bench ruling has since been stayed by the Supreme Court; that even ~~even~~ otherwise, the Full Bench ruling relied



Conf

upon by the applicant is not applicable to the facts of this case, as held in paragraph 10 of the Judgment; that even assuming, without admitting, that there is any error of law in the Judgment, it will not amount to an error apparent on the face of the Judgment, and in view of these considerations, the RA has no substance.

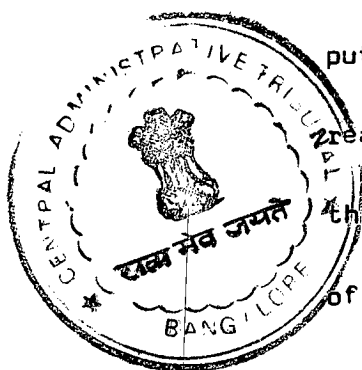
5. We have considered the rival contentions. In para 8 of the Judgment, we have taken note of the contention of Dr. Nagaraja for the applicant, that it is not sufficient if vigilance proceedings were pending on the date when the DPC met for preparing the list of candidates fit for promotion, and on that date, a departmental proceeding should have been initiated or at least, the officer concerned should have been placed under suspension. From this, it is apparent, that we did take notice of the contention of the applicant based on the Full Bench ruling of this Tribunal cited supra, since the gist of that ruling, which formed the basis for the contention of Dr. Nagaraja was set out in para 8 of the Judgment. In para 10, we stated that we had considered the rival contentions and perused the file produced before us on behalf of the respondents relating to RC 37/84 registered with the CBI. This means and implies that the ratio of the Full Bench ruling was very much in our mind, but on the basis of the notings culled



[Handwritten signature]

out from the relevant files, we took the view that the Full Bench ruling was not applicable to the facts of the OA.

6. We shall now touch briefly on the facts peculiar to the OA, which in our view, render the Full Bench ruling inapplicable, because of which, the ruling of the Full Bench was not applied to the facts of the OA. On 10.12.1985, when the DPC met, the Vigilance proceedings based on the S.P.'s report was already being processed. However, since the processing had not reached an advanced stage on that date, the name of the applicant was included in the list of candidates recommended for promotion, as Deputy Collector. However, when the file reached the CVO, he recorded a note on 15.4.1986, in which he stated that the evidence brought out ~~on account~~ on account of the investigation ~~during the~~ through the SP, created a reasonable doubt regarding the applicant's integrity or at least propriety of his conduct. The papers were thereafter put up to the Chairman, CVC, and on 23.9.1986, when the matter reached the Director, CVC, he recorded a note, in which he upheld the proposal of the CBI and the Department for the prosecution of the applicant.

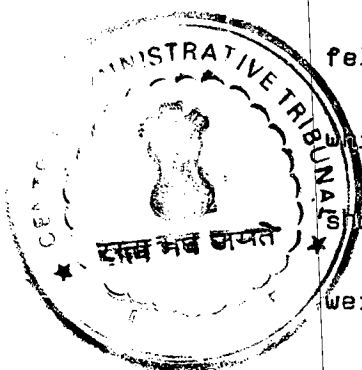


7. We are, therefore, of the view, that on the date when the DPC met, there was no justification for not including the name of the applicant in the list of candidates selected for promotion and accordingly, the DPC included the applicant's name.

[Handwritten signature]

But after a lapse of about 5 months, the investigation proceedings had reached a stage when a prima facie case was made out and within a few months thereafter, the CVC had advised launching of prosecution against the applicant, which was in fact launched, and the applicant placed under suspension. In other words, on 7.5.1986, when the list of officers promoted as Dy. Collectors was published, it escaped the notice of the department, that the investigation proceedings were on the verge of a charge sheet being framed against the applicant, and within 24 hours after the publication of the list, the same was cancelled.

8. In view of the facts stated above, the question which fell for consideration by the Division Bench of this Tribunal which heard the OA, was not whether the sealed cover procedure should have been followed by the DPC, but whether the respondents were justified in cancelling the order under which the applicant was granted promotion. We were inclined to the view that the order dated 7.5.1986 promoting the applicant, amongst others, was issued under a mistake and the respondents were, therefore, justified in cancelling the order, without assigning any reasons. On re-consideration, we find nothing objectionable in the view we have taken and the interests of the applicant are in no way jeopardised, since he would be entitled to the promotion granted



Cal

to him under the order dated 7.5.1986, and all benefits flowing therefrom, if the applicant is ultimately exonerated in the proceedings initiated against him by the respondents.

9. In this connection, it will not be out of place to take note of the fact that the operation of the ruling of the Full Bench of this Tribunal has been stayed by the Supreme Court. Shri Srinivasan submits, that the Supreme Court had granted only an interim stay of the operation of the Full Bench ruling and the ruling will therefore be still applicable. Even if the operation of the Full Bench ruling has been stayed by the Supreme Court by granting an interim stay, its applicability as long as the interim stay continues, is highly doubtful. We do not however like to pursue this aspect further, since for reasons already stated, there is no cogent ground for reviewing the Judgment.

53
/8/

to do, and this is impermissible in law.

11. As already stated, the substance of the Full Bench ruling has been sufficiently noticed and considered in the Judgment, and we are not persuaded to take a different view in this RA.

12. In the circumstances, the application for review is rejected: id.



Sd/-
MEMBER (A)

Sd/-
MEMBER (J)

TRUE COPY

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

to him under the order dated 7.5.1986, and all benefits flowing therefrom, if the applicant is ultimately exonerated in the proceedings initiated against him by the respondents.

9. In this connection, it will not be out of place to take note of the fact that the operation of the ruling of the Full Bench of this Tribunal has been stayed by the Supreme Court. Shri Srinivasan submits, that the Supreme Court had granted only an interim stay of the operation of the Full Bench ruling and the ruling will therefore be still applicable. Even if the operation of the Full Bench ruling has been stayed by the Supreme Court by granting an interim stay, its applicability as long as the interim stay continues, is highly doubtful. We do not however like to pursue this aspect further, since for reasons already stated, there is no cogent ground for reviewing the Judgment.

10. The legal position is now well settled and it will be pedantic to cite authorities in support of the proposition that any error of law will not amount to an error apparent on the fact of the Judgment, and a re-hearing cannot be allowed for the purpose of demonstrating that the judgment is erroneous. To do so, would be to convert the reviewing court into a court of appeal, and this is precisely what Shri Srinivasan wants us

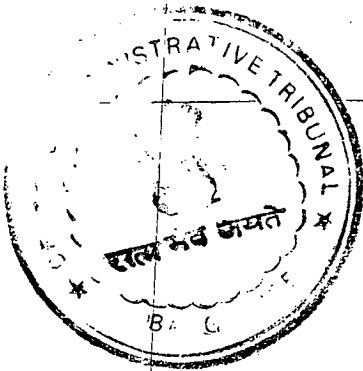


53
/8/

to do, and this is impermissible in law.

11. As already stated, the substance of the Full Bench ruling has been sufficiently noticed and considered in the Judgment, and we are not persuaded to take a different view in this RA.

12. In the circumstances, the application for review is rejected. *id.*



Sd/-

MEMBER(A)

Sd/-

MEMBER(J)

TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE